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FISHERIES POLLUTION REPORTS

RECOPIED VOLUME 1

CASE LAW:

PROSECUTIONS UNDER THE POLLUTION CONTROL PROVISIONS OF THE FISHERIES ACT

prepared by
Environmental Protection Service
Environment Canada

PART I:	Cases From Other Law Reports
PART II:	Unreported Decisions From Transcripts
PART III:	Unreported Judicial Comments on Sentencing

Prepared by
John E. MacLatchy
September, 1976
and recopied October, 1980
with headnotes by Michael J. Hardin

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ISSUES INVOLVED IN REPORTED JUDGEMENTS

UNDER SECTION 33 OF THE FISHERIES ACT

	Defendant	Offence	Facts	Relevant Sections	Issues Argued
1/1A	Stearns-Roger Engineering	33(2)	silting stream by bulldozer	33(11) 33(8)	deleterious to fish, fish eggs definition of fish, acquital, act preformed by agent
2	Jordan River Mines	33(2)	tailings spill	33(11)	mens rea not required, water frequented by fish, convicted
3	McTaggart	30	destruction of spawning grounds and eggs		constitutional law, mens rea, sec 30 valid federal legislation, sea coast and inland fisheries, convicted
4	Callaghan	33(2)	dumping of garbage and human waste in stream		no evidence introduced that garbage is a deleterious substance under 33(11), acquital
5/5A	Churchill Copper	33(2)	tailings spill	33(7) 33(8)	mens rea not required, injunction granted, appeal by stated case, conviction
6	MacMillian Bloedel Industries	33(2)	gravel washing, silting stream	33(8)	offence committed by employees, convicted company not exercising due diligence
7	Pacific Logging	33(3)	logging debris in stream	33(8)	Crown failed to prove that subsidiary company was the agent of defendant parent company, acquital
8	Jack Cewe	33(2)	silt from gravel operation		act of God, heavy rain, reasonable doubt, acquital

BRITISH COLUMBIA COURT OF APPEAL

McFarlane, Branca and Taggart JJ.A.

Regina v. Stearns-Roger Engineering Co. Ltd.

Fisheries — Depositing "deleterious substance" in water frequented by fish — Meaning of "fish" — Fish not including embryo fish in eggs — Accused acquitted where only eggs disturbed — The Fisheries Act, R.S.C. 1970, c. F-14, ss. 30, 33, as amended by R.S.C. 1970, c. 17 (1st Supp.), s. 3.

Appeal from the decision of Munroe J., reported at [1973] 2 W.W.R. 660, 10 C.C.C. (2d) 374. Appeal allowed.

[Note up with 11 C.E.D. (West. 2nd) *Fisheries*, s. 3; 22 C.E.D. (West. 2nd) *Words and Phrases*.]

J. S. Maguire, Q.C., and *L. T. Doust*, for appellant.

L. P. Jensen, for the Crown.

22nd June 1973. The judgment of the Court was delivered by

McFARLANE J.A. (orally):—We need not call on you in reply, Mr. Doust.

The appellant was acquitted by a Provincial Court Judge at Kamloops on an information containing two counts laid under s. 33(2) [re-en. R.S.C. 1970, c. 17 (1st Supp.), s. 3(1)] of the

Fisheries Act, R.S.C. 1970, c. F-14. The first count was that the appellant unlawfully deposited a deleterious substance in a place, to wit, the Thompson River, under a condition where such deleterious substance may enter water frequented by fish. The second count was that it did unlawfully and knowingly permit such a deposit.

The Crown appealed on questions of law by way of stated case to a Judge of the Supreme Court. The matter came for hearing before Munroe J. and on his consideration of the stated case he determined that the finding of the Provincial Court Judge was wrong in law and he directed that the case be disposed of accordingly. The appellant now appeals to this Court from the judgment of Munroe J. [[1973] 2 W.W.R. 660, 10 C.C.C. (2d) 374].

The stated case includes, by reference, the reasons for judgment given by the Provincial Court Judge at the time of his decision and I will quote a paragraph from it because it sets out succinctly, I think, all the facts necessary for the purposes of our decision today. The Provincial Court Judge said:

"Now, the facts in this case as I see them are relatively clear and quite simple. On November 4, 10, 11, 15, 16, 17, 18, 19, 20, 21, 22 and 24, 1971, the defendant company as head contractor caused one of the subcontractors to work in a salmon bed in the North Thompson River near Lornex Development. The result of this work it would seem to be clear on the overwhelming evidence was the stirring up of silt from the river bottom and causing this silt to be deposited downstream or a certain amount of it. The evidence of Mr. Cooper, the expert, was quite clear and I find from what he says that the effect of the sediment going downstream would be to reduce the survival of salmon eggs in the downstream spawning beds. It is also quite clear that at the time these events took place there were eggs only in the spawning grounds and not alevin, which according to Mr. Cooper would be expected around the end of February. Hence, then in November when this work is [I think the learned Judge meant "was"] being done the damaging effect, if any, would be only on salmon eggs."

In the stated case itself the point is emphasized in this way, where the Provincial Court Judge states the facts for the purposes of the stated case: "I also held that there is no evidence that what was done was harmful or could be harmful to fish." I should add that the Provincial Court Judge in his judgment also stated that the appellant had caused considerable damage to the spawning bed and that a charge might well have been laid successfully under s. 30 of the Fisheries Act. I need say no more about that.

Counsel on this appeal are agreed that the matter for decision depends upon a correct interpretation of the relevant provisions of the Fisheries Act, particularly s. 33(2) and the definition of "deleterious substance" which is found in s. 33 (1) [en. R.S.C. 1970, c. 17 (1st Supp.), s. 3(2)].

Section 33(2) reads:

"33. (2) Subject to subsection (4) [and I interpolate that counsel agree that is not relevant], no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water."

I will not read the whole of the definition of "deleterious substance", which is divided into two paragraphs, but I point out that in each the essential quality is that the quality of the water be rendered deleterious to fish or to the use by man of fish that frequent the water.

It seems to me, therefore, that the first question for decision is whether or not s. 33(2), on a proper interpretation, shows the intention to deal with the deposit of a substance in water where the effect of the deposit is to injure or damage eggs only and not fish; in other words, are eggs included in the meaning of the word "fish" in that subsection and in the definition?

In my opinion, on a proper interpretation the word "fish" in those parts of the statute does not include fish eggs. My reasons for that conclusion are principally these: first, that subs. (2) itself speaks of water *frequented* by fish. I cannot conceive of any natural or reasonable interpretation of the word where one could speak properly of water being frequented by eggs. Secondly, by s. 30 of the statute (which, in my view, it is proper to consider on the question of interpretation) we find this:

"30. The eggs or fry of fish on the spawning grounds shall not at any time be destroyed."

It seems to me that in that s. 30 Parliament has deliberately made a distinction between eggs or fry on the one hand and fish on the other.

I am, therefore, of the opinion that where damage to eggs only and not to fish has been shown there is, as a matter of law, no evidence of an unlawful deposit within the meaning of s. 32.

Munroe J. on one aspect of the case agreed with the argument of appellant's counsel that the bulldozer or "Cat" itself was not a deleterious substance within the meaning of the definition which I have read. I agree with that conclusion made by Munroe J.

There was a further question raised as to whether, in the circumstances disclosed by the stated case, it could be said that there was a deposit of a substance within the meaning of s. 33(2). In the view which I take of this case I think it is unnecessary and therefore inadvisable to express a view as to the meaning of that word "deposit" in the section.

The stated case concludes by stating:

"The question upon which the opinion of the Court is desired is whether, upon the above statement of facts and argument, I came to a correct determination and decision in point of law."

In my opinion, there was no error in law on the aspects which I have discussed in the determination made by the Provincial Court Judge and if I am right in that then, whatever may be said about other questions, he was right in rendering a verdict of acquittal.

I would therefore allow the appeal and restore the verdict of acquittal.

This does not mean that this Court approves of what was done in the Thompson River. We are dealing with a question of law here.

[1973] 2 W.W.R. 669

BRITISH COLUMBIA SUPREME COURT

Munroe J.

Regina v. Stearns-Roger Engineering Company Ltd.

Fisheries — Depositing "deleterious substance" in water frequented by fish — Bulldozer stirring up silt from river bed — Silt deposited on eggs in spawning ground — The Fisheries Act, R.S.C. 1970, c. F-14, s. 33(2), as re-enacted by 1970 (1st Supp.), c. 17, s. 3(1).

Respondent, by its agent, used a bulldozer along the banks of the Thompson River; in so doing some 2,000 feet of salmon spawning grounds were destroyed and in addition silt was stirred up from the river bed and carried further downstream, where it was deposited on other salmon spawning grounds, destroying some of the eggs by cutting off the supply of oxygen. Respondent was charged, under s. 33(2) of the Fisheries Act, with depositing or permitting the deposit of a deleterious substance in water frequented by fish. The Provincial Court Judge dismissed the charge. On a case stated, *held*, the appeal should be allowed: the silt was a "deleterious substance" added to the water within the meaning of s. 33(11) of the Fisheries Act; it mattered not how the silt was added to the water, nor that it was not introduced into the water from abroad: what mattered was that the quality of the water was degraded thereby and rendered deleterious to fish; "fish" must be taken to include fish in embryo, in the form of eggs in a spawning ground.

[Note up with 11 C.E.D. (2nd ed.) *Fisheries*, s. 3: 22 C.E.D. (2nd ed.) *Words and Phrases*.]

L. P. Jensen, for the Crown.

L. T. Doust, for respondent.

23rd January 1973. MUNROE J.:—Appeal by way of stated case from the decision of Bendrodt Prov. J., whereby he dismissed charges against the respondent at the close of the case for the Crown on the basis that there was no evidence upon which a conviction could reasonably be entered. Count 1 of the information alleged in effect that the respondent had unlawfully deposited a deleterious substance in the Thompson River and Count 2 alleged in effect that the respondent had knowingly permitted such deposit, both contrary to the provisions of the Fisheries Act, R.S.C. 1970, c. F-14, s. 33(2) [re-en. 1970 (1st Supp.), c. 17, s. 3(1)].

Evidence led by the Crown established prima facie that the respondent, as general contractor, had caused or knowingly permitted one of its subcontractors to work a D-7 bulldozer on the river bank and in the Thompson River. Such work resulted in a physical destruction and removal of about 2,000 feet of salmon spawning grounds, including the redds or nests which form the egg incubation bed in which the female salmon lays the eggs and the male salmon fertilizes them. In addition, the said work caused stirring up of silt from the river bottom. Some of that silt was carried downstream and over and through salmon spawning grounds, thereby damaging or destroying some of the eggs for want of oxygen and thus reducing the number of fry that will emerge from the redds, though such silt was not proved to be harmful to fish actually swimming in the river.

The learned Judge held that there was no evidence that, contrary to s. 33(2) of the Act, a "deleterious substance" had been "deposited" in the waters of the Thompson River (being water frequented by fish). From that decision this appeal is brought by the Crown.

Section 33 of the Fisheries Act appears under the heading of "Injury to Fishing Grounds and Pollution of Waters". I quote relevant portions thereof:

"33. (2) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water . . .

"(11) [en. 1970 (1st Supp.), c. 17, s. 3(2)] For the purposes of this section and section 33.1,

" 'deleterious substance' means

"(*a*) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered deleterious to fish or to the use by man of fish that frequent that water, or

"(*b*) any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered deleterious to fish or to the use by man of fish that frequent that water."

It is the submission of counsel for the respondent that no deposit of a deleterious substance was proved to have been made in the water of the Thompson River because: (1) fish (as distinct from eggs) were not hurt by the silt; (2) no "deposit" was made in the water of any substance, since the bulldozer merely stirred up the silt that was already in the water; (3) the bulldozer itself was not a "substance", deleterious or otherwise; and (4) s. 33(2) only prohibits the introduction into water of some foreign substance (such as effluent from a mill) that is harmful to fish.

It is my respectful opinion that:

1. The bulldozer is not a "deleterious substance" as defined by s. 33(11) and accordingly no offence under s. 33(2) was committed per se by the respondent in causing or permitting the operator of the bulldozer to tear up and damage the salmon spawning ground.

2. The silt which was put or placed in the water by the activities of the bulldozer was a "deleterious substance" as defined in s. 33(11). It was "added to" the water and its addition altered the quality of that water so that the water then became hurtful, harmful or destructive of salmon eggs and such harm to eggs rendered the water "deleterious to fish" in general and also to "the use by man of fish that frequent that water".

Prior to the use of the bulldozer, the water of the river was not harmful to the salmon eggs; after the addition of the silt, the water became so. It matters not how the silt was added to the water. What matters is that the quality of the water was degraded thereby. Once it is proved that such addition was harmful to the habitat or propagation of fish, the water must then be said to have been "rendered deleterious to fish or to the use by man of fish that frequent that water". Having regard to the obvious intention of Parliament to protect water frequented by fish and thus to preserve the source of fish for the public good, I hold that the word "fish" appearing in s. 33(11) means the whole race of fish and thus includes embryo fish in salmon eggs in salmon spawning grounds.

3. The silt was "deposited" in the water immediately it was put or placed therein, from whatever direction and in whatever manner.

4. A deleterious substance can be deposited in the water in the manner here alleged by the Crown, that is, by stirring-up of the river bed, and need not be introduced into the water from abroad.

The questions submitted for the opinion of the Court are both answered in the affirmative.

The matter is remitted to the learned Provincial Court Judge for completion of the trial in the light of this opinion.

BRITISH COLUMBIA PROVINCIAL COURT

Ostler D.J.

Regina v. Jordan River Mines Ltd.

Fisheries — Deposit of "deleterious substance" in waters frequented by fish — Whether mens rea an essential ingredient — The Fisheries Act, R.S.C. 1970, c. F-14, s. 33(2), as re-enacted by R.S.C. 1970, c. 17 (1st Supp.), s. 3(1).

The deposit of a deleterious substance in water frequented by fish, contrary to s. 33(2) of the Fisheries Act, is an offence of absolute liability in which mens rea is not an essential ingredient. To support a finding that waters are frequented by fish it is not necessary to show that there is an abundance of fish therein; the fact that fish, in however small quantities, are found in the waters is enough.

[Note up with 11 C.E.D. (West. 2nd) *Fisheries*, ss. 3, 12; 22 C.E.D. (West. 2nd) *Words and Phrases*.]

R. B. Hutchison, for the Crown.

I. G. Nathanson, for defendant.

13th December 1973. OSTER D.J.:—The defendant company is charged that:

"Count 1. The informant says that Jordan River Mines Ltd., between the 24th and 25th days of June, A.D., 1973, did unlawfully deposit a deleterious substance in a place, to wit: a settling pond at or near the Jordan River, in the County of Victoria, Province of British Columbia, under a condition where such deleterious substance may enter water frequented by fish, contrary to the provisions of Sub-Section 2 of Section 33 of the Fisheries Act as amended.

"Count 2. The informant says that Jordan River Mines Ltd., between the 24th and 25th days of June, A.D. 1973, did unlawfully deposit a deleterious substance, to wit: mine wastes and tailings in water frequented by fish, to wit: Jordan River in the County of Victoria, Province of British Columbia, contrary to the provisions of Sub-Section 2 of Section 33 of the Fisheries Act as amended . . .

"Count 4. The informant says that Jordan River Mines Ltd., did between the 24th and 25th days of June, A.D. 1973, at or near Jordan River, in the County of Victoria, Province of British Columbia, neglect to comply with an Order made under the Pollution Control Act, 1967, to wit: allowed a positive discharge of mine tailings to the Jordan River as prohibited by its permit issued pursuant to the Pollution Control Act, 1967, on the 9th day of August, 1971, and amended October 4th, 1971 and June 22nd, 1973, contrary to Section 20A of the Pollution Control Act, 1967."

Briefly put, the circumstances are these: By a strange coincidence, on the two successive days mentioned in the charge, separate breaks occurred in the lines carrying tailings from the mine operation to the sea. These leaks resulted in the deposit in the Jordan River of a substantial quantity of tailings which had a "siltation effect" on the river bottom. The mines superintendent testified that these leaks occurred because: (a) timber bracing secured by six-inch spikes inexplicably disappeared from the position where the main tailings pipeline broke and this was not discovered until after the event; and (b) an integral part of the disposal system was an underground pipe which, it was subsequently found, had never been completely connected. The Pollution Control Act, 1967 (B.C.), c. 34, s. 20A [re-en. 1970, c. 36, s. 12; am. 1972, c. 45, s. 8], reads in part as follows:

"20A. Every person is guilty of an offence against this Act and liable, on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months, or to both, and if the offence is of a continuing nature, to a fine not exceeding five hundred dollars for each day the offence is continued, who

"(*a*) contravenes any provision of this Act, the regulations, or any order made under this Act, or refuses or neglects to comply with this Act, the regulations, or any order made under this Act".

And the permit which forms part of the order issued pursuant to the Act provides that "The Permittee shall not allow a positive discharge to the Jordan River or any other freshwater watercourse."

The Fisheries Act, R.S.C. 1970, c. F-14, s. 33(2) [re-en. R.S.C. 1970, c. 17 (1st Supp.), s. 3(1)], reads:

"(2) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water";

and the defendant is charged with "depositing".

From these facts there emerge for determination three principal questions:

(1) *Are these offences of strict liability requiring no mens rea?* Mr. Nathanson, in his assiduous and persuasive argument, submitted that the inclusion of the word "permit" in the section introduces the element of mens rea into the offence and I have carefully considered the cases which he cited and upon which he relied. Further support for this assertion is found in the case of *Regina v. Can. Motor Lamp Co. Ltd.*, [1967] 1 O.R. 484, [1967] 2 C.C.C. 210. But that case was not followed in *Regina v. Industrial Tankers Ltd.*, [1968] 2 O.R. 142, 10 Cr. L.Q. 346, [1968] 4 C.C.C. 81, which latter case I follow. In my view, the offences charged fall under that "wide category of offences created by statutes enacted for the regulation of individual conduct in the interests of health, convenience, safety and the general welfare of the public which are not subject to (the presumption that mens rea is an essential ingredient)": per Ritchie J. in *Regina v. Pierce Fisheries Ltd.*, [1971] S.C.R. 5 at 13, 12 C.R.N.S. 272, [1970] 5 C.C.C. 193, 12 D.L.R. (3d) 591; see also *Regina v. Barrie* (1970), 13 Cr. L.Q. 371 (Ont.); *Regina v. Churchill Copper Corpn. Ltd.*, [1971] 4 W.W.R. 481, 5 C.C.C. (2d) 319, affirmed 5 C.C.C. (2d) 324n, affirmed 8 C.C.C. (2d) 36 (B.C. C.A.); *Regina v. McTaggart*, [1972] 3 W.W.R. 30 at 32-33, 6 C.C.C. (2d) 258 (B.C.); *Regina v. Standard Meats Ltd.*, [1973] 6 W.W.R. 350, 24 C.R.N.S. 257, 12 C.P.R. (2d) 137, 13 C.C.C. (2d) 194 (Sask. C.A.).

But, in the alternative, if mens rea is a necessary ingredient, it may be found in the failure of the defendant — having regard to the explicit stipulation in the permit — to make a comprehensive inspection and subsequent surveillance of the equipment. Irrespective of who made the original installation, the defendant company had the power, the means and the duty, following the issuance of the permit, to prevent this occurrence.

Certainly the defendant did deposit mine waste and tailings in the settling pond under conditions where it may — and in fact did — enter the Jordan River, in contravention of the order contained in the permit issued pursuant to The Pollution Control Act, referred to in count 4.

(2) *Is the Jordan River "water frequented by fish"?* In February of 1973 one Langer, an employee of the Department of the Environment (Fisheries) — and a witness whom the Court accepted as an expert in biology, and specifically fish and aquatic ecology — conducted shock experiments in the river between the British Columbia Hydro plant and the Jordan River Mines premises and collected fish, two steelheads

and one bullhead. These were not adult fish and in the opinion of the witness they had not been to the ocean and had always resided in the stream. That witness was convinced that fish frequent the river and it was his opinion that they did so in June of this year. In March of 1973, fisheries officer McNairnay probed the Jordan River in the same area with an electrical device and found two steelhead fingerlings and a bullhead. In October of 1973 an employee of the British Columbia Hydro, during the course of a pumping operation in this area of the river, found three chum salmon, each of about ten pounds, "very much alive". It is true that an "Annual Report of Salmon Stream and Spawning Grounds" of Environment Canada for the year 1972 (Ex. 8) indicated that "no fish showed" in the Jordan River; but there is evidence that this report refers to the adult form of fish and, in any event, it does not follow, because an "eyeball" inspection of the stream on 15th and 29th August and 9th September 1972 was negative, that it is not inhabited by fish. The evidence is to the opposite effect and, on the evidence of these witnesses, I am quite satisfied that the Jordan River is, and was at the material time, "water frequented by fish".

(3) *Was this deposit a "deleterious substance"* as defined in s. 33(11) [en. R.S.C. 1970, c. 17 (1st Supp.), s. 3(2)] of the Fisheries Act, the relevant portion of which reads:

"(11) For the purposes of this section and section 33.1,

"'deleterious substance' means

"(*a*) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered deleterious to fish or to the use by man of fish that frequent that water, or . . . "?

The use of the word "means" makes that definition exhaustive: *Gaysek v. The Queen*, [1971] S.C.R. 888, 15 C.R.N.S. 345, 2 C.C.C. (2d) 545, 18 D.L.R. (3d) 306; *Regina v. Collins*, [1973] 1 O.R. 510, 10 C.C.C. (2d) 52, 31 D.L.R. (3d) 532, affirmed 41 D.L.R. (3d) 232 (C.A.). Mr. Langer, who delivered an interesting lesson in biology and ichthyology, explained how these tailings, by settling on the bed of the stream, would destroy the food of fingerlings (which I find defined in the dictionary as "small fish") by preventing the growth of algae by means of blocking out sunlight and oxygen and, with a "sandpaper" effect, forcing the fish food out of the environment. He said that without such growth there could be no fish and that the introduction of the tailings into the river was definitely deleterious to the fish. Despite Mr. Nathanson's skilful questioning, I found the evidence of this witness cogent and convincing.

The definition of "deleterious substance" was considered by Munroe J. in the case of *Regina v. Stearns-Roger Engineering Co. Ltd.*, [1973] 2 W.W.R. 669, 10 C.C.C. (2d) 374 (B.C.), where the material under consideration was silt, a substance similar in nature and effect to the tailings deposited in this case; and at p. 671 of the [W.W.R.] report, Munroe J. said:

> "2. The silt which was put or placed in the water by the activities of the bulldozer was a 'deleterious substance' as defined in s. 33(11). It was 'added to' the water and its addition altered the quality of that water so that the water then became hurtful, harmful or destructive of salmon eggs and such harm to eggs rendered the water 'deleterious to fish' in general and also to 'the use by man of fish that frequent that water'."

The determination of Munroe J. was reversed in the Court of Appeal, [1974] 3 W.W.R. 285, 12 C.C.C. (2d) 260, 37 D.L.R. (3d) 753, but that honourable Court did not enunciate upon the finding of the learned Judge as hereinbefore set out. The ratio of the decision of the Court of Appeal is to be found at p. 262 of the [C.C.C.] report, where McFarlane J.A. said, "I am, therefore, of the opinion that where damage to eggs only and not to fish has been shown there is, as a matter of law, no evidence of an unlawful deposit within the meaning of s. 32." The learned Judges of appeal declined to express a view as to the meaning in the section of the word "deposit". I think that no question arises in that connection in this case because clearly the tailings were "deposited" in the river (Webster's Seventh New Collegiate Dictionary: "deposit . . . 2b: to let fall (as sediment)"); the substance was "added to" the water (Webster: "add, 1b: to come together . . . by addition").

I find that the defendant did deposit a deleterious substance in the river and is guilty on all three counts.

BRITISH COLUMBIA COUNTY COURT

Grimmett Co. Ct. J.

Regina v. McTaggart

Fisheries — Destruction of eggs on spawning ground — Whether mens rea an element of offence — The Fisheries Act, R.S.C. 1970, c. F-14, s. 30 — Whether ultra vires.

Section 30 of the Fisheries Act reads: "30. The eggs or fry of fish on the spawning grounds, shall not at any time be destroyed." and it creates an offence, triable summarily, of absolute liability of which mens rea is not an essential element: *Regina v. Pierce Fisheries Ltd.*, [1971] S.C.R. 5, 12 C.R.N.S. 272, [1970] 5 C.C.C. 193, 12 D.L.R. (3d) 591 applied.

Section 30 does not contravene the powers granted to the provinces by s. 92(13) of the B.N.A. Act, 1867, to legislate exclusively in relation to property and civil rights, and is therefore, intra vires.

[Note up with 11 C.E.D. (2nd ed.) *Fisheries*, ss. 3, 12.]

H. M. Suiker, for appellant.

D. Kier, for the Crown.

25th January 1972. GRIMMETT Co. Ct. J.:—This is an appeal from the conviction made in the Provincial Court on a charge laid under s. 30 of the Fisheries Act, R.S.C. 1970, c. F-14, formerly R.S.C. 1952, c. 119, of destroying the eggs or fry of fish on the spawning grounds.

No evidence was adduced at the hearing of the appeal as counsel agreed upon the facts as set forth in the reasons for judgment of the Provincial Court Judge as follows:

"1. The accused and his wife are the owners of certain lands over a portion of which Murray Creek runs.

"2. In the original Crown grant of these lands from the Provincial Crown there was contained no reservation of stream or watercourses.

"3. In the fall of 1969 Mr. McTaggart received written permission from the Water Rights Branch to do certain defined work on the creek to lessen erosion. The work consisted primarily of placing large rocks at the bend in the creek and was completed in 1969.

"4. On 9th July 1970 Mr. Donald Udy, a conservation officer, and a fisheries officer attended on the lands in question and observed a bulldozer driven by one Austin Jensen, under the direction of the accused, scooping gravel out of Murray Creek. Also present was a dump truck.

"5. I find as a fact that this portion of the creek was a spawning ground and on 9th July 1970 there were fry present in the immediate area of the bulldozer and, as a result of the actions of the bulldozer, fry were killed. This area of Murray Creek is defined in the regulations of the Fisheries Act as spawning grounds.

"6. Evidence was quite clear that immediately up from from Mr. McTaggart's property the Municipality of Langley had constructed a large culvert necessitating blasting, etc. In my opinion this evidence was not relevant and I have disregarded it.

"7. There can be no doubt that this portion of Murray Creek is non-tidal and non-navigable."

Three grounds of defence were submitted on behalf of the appellant and I shall state each of these grounds, my decision thereon, and a brief reason for such decision.

The first ground is that the Fisheries Act contains no provision for the procedure to be followed for a breach of s. 30, which reads as follows:

"30. The eggs or fry of fish on the spawning grounds, shall not at any time be destroyed."

I am unable to find anywhere in the Act any provision to the effect that any one who breaches this section is guilty of an offence and liable on indictment or summary conviction to such or such a penalty, as is commonly found in most statutes. The matter is covered, in my opinion, by the application of ss. 61 and 65 of the Fisheries Act and s. 27(1)(*b*) of the Interpretation Act, R.S.C. 1970, c. I-23. The respective sections are as follows:

"61. Except as herein otherwise provided, every one who violates or prepares to violate any provision of this Act, or any regulation, is liable to a penalty of not more than one thousand dollars and costs, and, in default of payment, to imprisonment for a term not exceeding twelve months, or to both."

"65. Except in so far as in this Act is otherwise specially provided all penalties and forfeitures incurred under this Act or under any regulation are recoverable and enforceable by summary proceedings taken under the provisions of the *Criminal Code* relating to summary convictions."

"27. (1) Where an enactment creates an offence . . .

"(*b*) the offence shall be deemed to be one for which the offender is punishable on summary conviction if there is nothing in the context to indicate that the offence is an indictable offence".

A perusal of these sections discloses that s. 61 of the Fisheries Act provides a penalty for a violation of any of the provisions of the Act; that s. 65 of the Fisheries Act provides for summary proceedings under the Criminal Code, R.S.C. 1970, c. C-34, relating to summary conviction, and that s. 27(1)(*b*) of the Interpretation Act provides that the offender is punishable on summary conviction in the absence of an indication that the offence is an indictable offence. There is no indication that breach of s. 30 is an indictable offence so the procedure must, therefore, be by way of summary conviction.

The second ground of defence is that mens rea is a necessary ingredient and there was no proof of same. I believe it is common ground that there is no proof whatever that the appellant had any intention of committing any unlawful act, nor did he have any knowledge that such an unlawful act was being committed. On this ground of defence, I find that mens rea need not be proven and that s. 30 creates an absolute prohibition. The case of *Regina v. Pierce Fisheries Ltd.*, [1971] S.C.R. 5, 12 C.R.N.S. 272, [1970] 5 C.C.C. 193, 12 D.L.R. (3d) 591, is a most applicable guide on this point. The dictum of Ritchie J. in this Supreme Court of Canada decision, as found on p. 199, defines the issues:

"Generally speaking, there is a presumption at common law that *mens rea* is an essential ingredient of all cases that are criminal in the true sense, but a consideration of a considerable body of case law on the subject satisfies me that there is a wide category of offences created by statutes enacted for the regulation of individual conduct in the interests of health, convenience, safety and the general welfare of the public which are not subject to any such presumption. Whether the presumption arises in the latter type of cases is dependent upon the words of the statute creating the offence and the subject-matter with which it deals."

In my opinion, the case at bar comes within the category of a statute enacted for the regulation of individual conduct in the interests of the general welfare of the public.

The third ground of defence is that the said s. 30 is ultra vires the Parliament of Canada in that it contravenes the powers granted to each province under s. 92(13) of the B.N.A. Act, 1867, to legislate exclusively as to property and civil rights in the province.

The relevant portions of the B.N.A. Act applicable to the case at bar are as follows:

"91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say, . . .

"12. Sea Coast and Inland Fisheries . . .

"92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next herein-after enumerated; that is to say, . . .

"13. Property and Civil Rights in the Province."

The leading case on this subject appears to be *Regina v. Robertson* (1882), 6 S.C.R. 52, 2 Cart. 65. Certain portions of the judgment of Ritchie C.J.C. are applicable, and they are as follows [S.C.R. p. 110]:

"In construing the *British North America Act*, I think no hard and fast canon or rule of construction can be laid down and adopted by which all acts passed as well by the Parliament of *Canada* as by the local legislatures upon all and every question that may arise can be effectually tested as to their being or not being *intra vires* of the legislature passing them. The nearest approach to a rule of general application that has occurred to me for reconciling the apparently conflicting legislative powers under the *British North America Act*, is what I suggested in the cases of *Valin v. Langlois* (1879), 3 S.C.R. 1 at 15, and *Citizens' Insur. Co. v. Parsons; Queen Insur. Co. v. Parsons*, 4 S.C.R. 215 at 242, reversed on the merits but affirmed on constitutional questions (1881), 7 App. Cas. 96, 1 Cart. 265, with respect to property and civil rights, over which exclusive legislative authority is given to the local legislatures: that, as there are many matters involving property and civil rights expressly reserved to the Dominion Parliament, the power of the local legislatures must, to a certain extent, be subject to the general and special legislative powers of the Dominion Parliament. But while the legislative rights of the local legislatures are in this sense subordinate to the rights of the Dominion Parliament, I think such latter rights must be exercised so far as may be consistently with the rights of the local legislatures, and therefore the Dominion Parliament would only have the right to interfere with property and civil rights in so far as such interference may be necessary for the purpose of legislating generally and effectually in relation to matters confided to the Parliament of *Canada*. And this view I think was clearly in the mind of the Privy Council when in *Cushing v. Dupuy* (1880), 5 App. Cas. 409 at 415, 1 Cart. 252, in speaking of the powers of the dominion and provincial legislatures, it is said in the judgment of the Privy Council by Sir *M. E. Smith*:—

"'It is therefore to be presumed, indeed it is a necessary implication, that the Imperial statute, in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency, intended to confer on it legislative power to interfere with property, civil rights and procedure within the provinces, *so far as a general law relating to those subjects might affect them*.'"

At p. 123:

"To all general laws passed by the Dominion of *Canada* regulating 'sea coast and inland fisheries' all must submit, but such laws must not conflict or compete with the legislative power of the local legislatures over property and civil rights beyond what may be necessary for legislating generally and effectually for the regulation, protection and preservation of the fisheries in the interests of the public at large. Therefore, while the local legislatures have no right to pass any laws interfering with the regulation and protection of the fisheries, as they might have passed before confederation, they, in my opinion, clearly have a right to pass any laws affecting the property in those fisheries, or the transfer or transmission of such property under the power conferred on them to deal with property and civil rights in the province, inasmuch as such laws need have no connection or interference with the right of the Dominion parliament to deal with the regulation and protection of the fisheries, a matter wholly separate and distinct from the property in the fisheries. By which means the general jurisdiction over the fisheries is secured to the parliament of the Dominion, whereby they are enabled to pass all laws necessary for their preservation and protection, this being the only matter of general public interest in which the whole Dominion is interested in connection with river fisheries in fresh water, non-tidal rivers or streams, such as that now being considered, while at the same time exclusive jurisdiction over property and civil rights in such fisheries is preserved to the provincial legislatures, thus satisfactorily to my mind, reconciling the powers of both legislatures without infringing on either."

From these dicta, I come to the conclusion that the Federal Parliament may pass such laws as may be necessary "for legislating generally and effectually for the regulation, protection and preservation of the fisheries in the interests of the public at large".

For the above reasons, I feel that the appeal must be and is, therefore, dismissed, and the conviction against the appellant confirmed.

Prince Edward Island Supreme Court
At Trial, Nicholson, J.
April 20, 1972.

FISHERIES - CANADA FISHERIES ACT, SECTION 33 - CHARGE OF DISCHARGING A DELETERIOUS SUBSTANCE INTO WATER FREQUENTED BY FISH - FARM AND HOUSEHOLD REFUSE CONSISTING OF CANS, PAPER, TWINE, BOTTLES AND HUMAN WASTE - MEANING OF "DELETERIOUS SUBSTANCE" - SUPREME COURT ON APPEAL BY WAY OF TRIAL DE NOVO HELD THAT IT WAS NOT PROVED THAT MATERIAL WOULD RENDER WATER DELETERIOUS TO FISH - CONVICTION QUASHED.

The supreme court allowed the accused's appeal by way of trial de novo and quashed the conviction of the accused. The accused was charged with discharging a deleterious substance into water frequented by fish contrary to Section 33(2) of the Canada Fisheries Act.

The accused dumped farm and household refuse consisting of cans, paper, twine, bottles and human waste into a stream. The court held it was not proved that any of the material was a "deleterious substance" as defined in Section 33(11) of the Fisheries Act.

STATUTES JUDICIALLY NOTICED:
Fisheries Act, R.S.C. 1970, c. F-14, s. 33.

Appeal by way of trial de novo from a conviction before His Honor James B. Johnston, Provincial Magistrate for Prince Edward Island.

KENNETH R. MacDONALD, for the appellant,
BERT G. CAMPBELL, for the respondent.

NICHOLSON, J.: The appellant was convicted on the 15th day of July, 1971 by Provincial Magistrate James B. Johnston of the charge "that he did on or about the 11th day of June, A.D. 1971 at or near New Perth in Kings County, Prince Edward Island knowingly discharge a deleterious substance to wit; barn and house garbage, into the Dewar Stream which empties into the Brudenell River which water is frequented by fish, contrary to Section 33 sub-section 2 of The Fisheries Act". Upon this conviction he was sentenced to pay a fine of $100.00 together with $2.00 costs and in default of payment of the fine and costs to be imprisoned in Kings County Gaol at Georgetown for the term of thirty days.

The Appellant was convicted upon a plea of guilty to the said charge having been entered by Kenneth R. MacDonald, an attorney acting on behalf of the Appellant. On the hearing of the appeal Mr. MacDonald acknowledged that it was his error that a plea of guilty had been entered and that he had not actually interviewed the Appellant until after the conviction was made against him. The plea of guilty having been entered by mistake I allowed the appeal to proceed, accordingly a "trial de novo" under Part XXIV of the Criminal Code was proceeded with.

Four witnesses were called on behalf of the prosecution namely: Arthur MacDonald, Patrick John Heppell, Foch MacDonald and Everett Roy Clow.

Arthur MacDonald is a farmer who lives at New Perth in Kings County. On the afternoon of June 11th, 1971 he was on a road known as the Collins Road when he met the Appellant driving a farm tractor which was towing a trailer loaded with garbage. The road on which the Appellant was travelling passes over the Dewar stream by means of a road bridge. Arthur MacDonald saw the Appellant with the load of garbage travelling towards "the brook" (Dewar stream). He says there was bailer twine and cans on the load. He saw the Appellant return along the road a short time later after the load on the trailer had been dumped. He went back to the stream where he saw "a whole bunch of junk in the stream" including bailer twine and other things such as he had seen on the Appellant's trailer. He says that it would appear that the garbage was "dumped over the end of the bridge". He also says he had been down to the stream two or three minutes before he met the Appellant and there was no garbage in the stream at that time. This witness is about 75 years of age and a long time resident in the area. He says the stream is frequented by fish and that the stream flows into Brudenell River. After he went back and saw the garbage in the stream he contacted the R.C.M.P.

5 Constable Patrick John Heppell is a member of the R.C.M.P. stationed at Montague in Kings County. He says that after talking to the witness Arthur MacDonald he went down to the stream in question where he saw "*a certain amount of garbage, coffee jars, cans, pickle bottles, household garbage*". He then tells of how he went to the Appellant's farm where he talked to the Appellant. His evidence is, in part, as follows:

> Q. Were you talking to him?
> A. I was. I confronted him with the garbage being there and he stated he had taken his trailer down this side road by the stream and was going to dump the garbage on his property and he made a turn down by the bridge and some of the garbage might have accidentally fallen off.
>
> Q. Into the stream?
> A. Yes. And he stated to me after I told him some had found its way into the stream if it had come off his trailer I expected him to clean it up and he stated he would.

6 Foch MacDonald is a fisheries officer with the Federal Fisheries Department. On June 12th, 1971 after talking to the witness Arthur MacDonald he along with a fellow fisheries officer went to the stream in question. His evidence of what he found in the stream, and of what he did, is as follows:

> Q. As a result of your contact with Mr. MacDonald what did you do?
> A. Accompanied by Fisheries Officer Roy Clow I proceeded to the stream in question and checked the stream for report of the garbage that was in it and I found in that stream the following:--
>
> Q. You took notes at that time?
> A. Yes. This was taken on the 12th of June. Tomato cans, bean can, coffee bottle, kam and klik cans, oil cloth, paper cartons, pieces of barn stansions, binder twine, BonAmi can, fruit cocktail can, toilet paper and disposable diapers, human waste and Heinz vinegar bottle. After checking it, we then proceeded to the home of the accused Curtis Callaghan. Mr. Callaghan was not at home. We went back to the office and on Monday the 14th of June about approximately 8:30 in the morning I went to Mr. Callaghan's residence again and he met me in the yard. When I mentioned the garbage he said, "what the hell is going on here. I have already been talking to the R.C.M. Police on Saturday and told them I would clean the garbage out of the water". I then informed him that I would have to report the incident to my District Protection Officer, Mr. Farrar and there might be a charge laid against him.

Foch MacDonald says the stream where the garbage was found is frequented by trout.

7 Everett Clow is also a Federal Government Fisheries Officer and he was at the stream with Foch MacDonald. He saw in the stream all the materials mentioned by Foch MacDonald. He also says the stream is frequented by trout.

8 The appellant gave evidence on his own behalf. His evidence is, in part, as follows:

> Q. Did you put items on this day in there?
> A. Not in as far as usual. The maintainer dug the ditch out, you couldn't get in, so therefore it was put on the bank along the side of the stream.
>
> Q. On the side of this brook?
> A. Yes.
>
> Q. These items that were listed today by Mr. MacDonald are these the items you had in garbage in that particular day?
> A. Yes.

Q. All of them?
A. Yes.

Q. There was tomato, beans, cans, klik cans, oil cloth, stansions and disposable diapers, you took all of those down there that day?
A. Yes.

Q. How far from the water did you put them?
A. The most would be several yards.

Q. Would you have put them on the bank?
A. Yes, up on the bank.

Q. How high would the bank be there?
A. It would be 6 or 7 feet.

. . . .

Q. Did you meet Mr. MacDonald when you were going in with the load?
A. Yes.

Q. You say nobody saw you, MacDonald did not see you?
A. Nobody saw me unloading it.

9 From the foregoing evidence I find as a fact that the Appellant knowingly discharged the garbage he was hauling and unloading from his trailer into the Dewar stream. And I also find that the stream at the place where the garbage was discharged or unloaded is frequented by fish.

10 Before the Appellant can be convicted it must be established that the garbage comprised a "deleterious substance" under the provisions of the Fisheries Act. As I have said the offence is alleged to have been committed on June 11th, 1971 against "Section 33 sub-section 2 of the Fisheries Act". Section 33 of the Fisheries Act (R.S.C. 1970 Chap. F. 14) provided as follows:

> 33. (1) No one shall throw overboard ballast, coal ashes, stones, or other prejudicial or deleterious substances in any river, harbour or roadstead, or in any water where fishing is

> carried on, or leave or deposit or cause to be thrown, left or deposited, upon the shore, beach or bank of any water or upon the beach between high and low water mark, remains or offal of fish, or of marine animals, or leave decayed or decaying fish in any net or other fishing apparatus; such remains or offal may be buried ashore, above high water mark.
>
> (2) No person shall cause or knowingly permit to pass into, or put or knowingly permit to be put, lime, chemical substances or drugs, poisonous matter, dead or decaying fish, or remnants thereof, mill rubbish or sawdust or any other deleterious substance or thing, whether the same is of a like character to the substances named in this section or not, in any water frequented by fish, or that flows into such water, nor on ice over either such waters.
>
> (3) No person engaging in logging, lumbering, land clearing or other operations, shall put or knowingly permit to be put, any slash, stumps or other debris into any water frequented by fish or that flows into such water, or on the ice over either such water, or at a place from which it is likely to be carried into either such water.
>
> (4) The Governor in Council may by order deem any substance to be a deleterious substance for the purposes of subsection (2).
>
> (5) Every person who violates any provision of this section is guilty of an offence and is liable upon summary conviction,
> (a) for the first offence, to a fine of not less than one hundred dollars and not more than one thousand dollars or to imprisonment for a term of not less than one month and not more than six months, or to both such fine and imprisonment; and (b) for a second and each subsequent offence, to a fine of not less than three hundred dollars and not more than two thousand dollars or to imprisonment for a term of not less than two months and [illegible]

more than twelve months, or to both such fine and imprisonment.

I believe that from the nature of the prosecution the fisheries officers may have been under the impression that Section 33(2) of the Fisheries Act on June 11, 1971 was as stated above. However, Section 33(2) of the Fisheries Act was amended by 18-19 Elizabeth II Chap. 63 section 3 which provides as follows:

> 3. (1) Subsection (2) of section 33 of the said Act is repealed and the following substituted therefor:
>
> > (2) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water.
>
> (2) Subsections 4 and 5 of section 33 of the said Act are repealed and the following substituted therefor:
>
> > (4) Subsection (2) does not apply (a) to the deposit of waste of a type, in a quantity and under conditions authorized by regulations made by the Governor in Council under any other act in any waters with respect to which those regulations are applicable, or in any place under any conditions where such waste or any other waste that results from the deposit of such waste may enter any such waters; or (b) to the deposit of a deleterious substance of a type, in a quantity and under conditions authorized by any regulations made by the Governor in Council under this Act for the purposes of this subsection in any water with respect to which those regulations are applicable, or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water.

> > (5) Any person who violates any provision of this section is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars for each offence.
> >
> > (6) Where an offence under subsection (5) is committed on more than one day or is continued for more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.
> >
> > (7) Where a person is convicted of an offence under this section, the court may, in addition to any punishment it may impose, order that person to refrain from committing any further such offence or to cease to carry on any activity specified in the order the carrying on of which, in the opinion of the court, will or is likely to result in the committing of any further such offence.
> >
> > (8) In a prosecution for an offence under this section or section 33D, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.
> >
> > (9) Notwithstanding that a prosecution has been instituted in respect of an offence under this section, the Attorney General of Canada may commence and maintain proceedings to enjoin any violation of any provision of this section.
> >
> > (10) No civil remedy for any act or omission is suspended or affected by reason that the act or omission is an offence under this section, and where, by reason of the occurrence or existence in, upon or adjacent to

any water frequented by fish of any condition resulting from an act or omission by a person that is an offence under this section, the Minister directs any action to be taken by or on behalf of the Crown to repair or remedy the condition or reduce or mitigate any damage to or destruction of life or property that has resulted or may reasonably be expected to result from its occurrence or existence, the costs and expenses of and incidental to the taking of such action, to the extent that such costs and expenses can be established to have been reasonably incurred in the circumstances, are recoverable by the Crown from that person with costs in proceedings brought or taken therefor in the name of Her Majesty in any court of competent jurisdiction.

(11) For the purposes of this section and section 33A,

(a) 'deleterious substance' means
(i) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered deleterious to fish or to the use by man of fish that frequent that water, or
(ii) any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered deleterious to fish or to the use by man of fish that frequent that water.
and without limiting the generality of the foregoing includes

(iii) any substance or any substance that is part of a class of substances prescribed pursuant to paragraph (a) of subsection (12),
(iv) any water that contains any substance that is part of a class of substances in a quantity or concentration that is equal to or in excess of a quantity or concentration prescribed in respect of that substance or class of substances pursuant to paragraph (b) of subsection 12, and
(c) any water that has been subjected to a treatment, process or change prescribed pursuant to paragraph (c) of subsection (12); and

(b) 'water frequented by fish' includes all waters in the fishing zones of Canada.

(12) The Governor in Council may make regulations prescribing

(a) substances and classes of substances,
(b) quantities or concentrations of substances and classes of substances in water, and
(c) treatments, processes and changes of water

for the purpose of subparagraphs (iii) to (v) of paragraph (a) of subsection (11).

This section was proclaimed in force on July 15th, 1970. It will be seen that this most recent amendment to the Fisheries Act makes substantial changes in the law. Whatever may have been the situation of the Appellant prior to the amendment referred to above it it my opinion that the substances which the Appellant is charged with having put into the Dewar Stream do not or at least have not been proved to come within the definition of "deleterious substance" as defined by the Fisheries Act, Section 33(11). There was nothing to show that all or any of the substances in question "if added to any water would degrade or alter or form a part of a process of degradation or alteration of the quality of that water so that it is rendered deleterious to fish or to the use by man of fish that frequent that water". The substances not coming within Section 33 11(a)(i) are clearly excluded from the other parts of the section defining "deleterious substances".

11 The result is that the appeal is allowed, the charge against the Appellant is dismissed, the conviction and sentence is quashed. There will be no order as to costs on the appeal.

Appeal allowed.

REGINA v. CHURCHILL COPPER CORP. LTD.

British Columbia Court of Appeal, Maclean, McFarlane and Nemetz, JJ.A. May 8, 1972.

Appeal — Stated case — Provincial Judge stating case — Appellant's remedy where not satisfied with case as stated.

Section 738 (now s. 766) of the *Criminal Code* does not confer jurisdiction on a superior Court Judge to make an order showing cause why a

case should not be stated where one has been stated but not to the satisfaction of the appellant. Where the case stated is one which does not satisfy the appellant and he wants something else stated, his remedy is to apply to the Judge hearing the stated case to remit the case to the summary conviction Court for amendment.

Appeal — Stated case — Questions as to sufficiency of evidence — Not proper questions on stated case — Cr. Code, 1953-54, s. 731.

APPEAL by the accused from the decision of Macdonald, J., 5 C.C.C. (2d) 324*n*, dismissing the accused's application for an order pursuant to s. 738 of the *Criminal Code* directing Arkell, D.C.J., to show cause why a case should not be stated from the accused's conviction, 5 C.C.C. (2d) 319, [1971] 4 W.W.R. 481, for depositing deleterious substances in a river contrary to s. 33(2) (rep. & sub. 1969-70, c. 63, s. 3(1)) of the *Fisheries Act*, R.S.C. 1952, c. 119 (now R.S.C. 1970, c. F-14).

R. C. Gardner, for accused, appellant.
R. M. Hayman, for the Crown, respondent.

The following judgments were delivered orally:

MACLEAN, J.A.:—I will ask my brother McFarlane to give the first judgment.

MCFARLANE, J.A.:—On May 4, 1971, this appellant was tried before His Honour Judge K. F. Arkell. a District Judge of the Provincial Court at Fort Nelson, and convicted upon the charge that near the confluence of the Racing River and Delano Creek in the Province of British Columbia, between the 12th and 25th days of February, 1971, it did unlawfully deposit a deleterious substance in the said Racing River, being water frequented by fish, contrary to the provisions of the *Fisheries Act*, R.S.C. 1952, c. 119 [now R.S.C. 1970, c. F-14], and amendments thereto.

The Provincial Court Judge was acting under the summary conviction provisions of the *Criminal Code*.

On May 19, 1971, the appellant applied to the Provincial Court Judge to state a case under s. 734 [now s. 762] of the *Criminal Code*. The application was based upon the ground that "the conviction is erroneous in point of law by reason that", and then sets out six alleged grounds of error.

Arkell, D.C.J., stated the case, which is dated May 28, 1971 [5 C.C.C. (2d) 319, [1971] 4 W.W.R. 481], in which, as required by the provisions of the statute, he set out his findings of fact on the evidence which he had heard. He went further, and to a considerable degree set out a summary of the evidence upon which he made those findings of fact.

The appellant then applied to the Supreme Court of this Province under the provisions of s. 766(1) of the *Criminal Code*, for an order that the summary conviction Court show cause why a case should not be stated. That application was heard by Macdonald, J., and was dismissed on August 18, 1971 [5 C.C.C. (2d) 324*n*]. This appeal is brought from that dismissal.

The first answer taken by Mr. Hayman, on behalf of the Crown, to this appeal is that s. 766(1) of the *Criminal Code* does not apply, or, as he put it, is not available to the appellant in these circumstances. That is another way of saying, and the way I would prefer to say it is, that the subsection does not confer jurisdiction on Macdonald, J., to make the order which he was asked to make in this case. I agree with that submission.

I have already pointed out that the Provincial Court Judge in this case did not refuse to state a case. He stated a case in which, having stated his findings of fact and some of the evidence, he propounded for determination by the Supreme Court one question which was clearly a question of law.

In my opinion, where the case stated by the Provincial Court Judge is one which does not satisfy the appellant and he wants something else stated, the Judge hearing the stated case, under s. 766(1) of the *Criminal Code*, has the power, where he considers it proper, to remit the stated case to the summary conviction Court for amendment. As I say, I would dismiss this appeal on that ground alone, but I think I should add something more in view of the nature of the arguments which have been presented and what was said by Macdonald, J., when he dealt with the application.

He found that of the six grounds raised in the application for the stated case, one was purely a question of law. That is now conceded. I think it was conceded by the Crown, and the case stated was certainly stated properly with respect to that ground.

As to the others, Macdonald, J., said [at p. 324]:

> In my opinion grounds numbered 1, 2, 3 and 6 are all questions as to the sufficiency of evidence and therefore the learned Judge was right in declining to state a case respecting them.

I respectfully agree with that conclusion of Macdonald, J. He proceeded:

> Ground No. 5 is as follows:
>
> > "That your Honour did err in finding that there was any admissible evidence that the offence was committed by an employee or agent of the accused."

> I find this question unintelligible. It does not help that the affidavit in support of this application indicates that it intended to propound a question as to admissibility of certain evidence let in by the Judge.

Assuming, as counsel for the appellant has contended here, that that question was intended to raise and that it should be interpreted so as to raise the question whether at the trial the Provincial Court Judge had admitted in evidence evidence that was inadmissible to prove that a certain person was an employee or agent of the appellant, I am of the opinion that the decision of Macdonald, J., was right on the facts of this case because the affidavit to which the appellant referred shows that there was evidence that the person in question did at a certain time state that he held the office of superintendent. It follows from that that the question whether he was an employee, responsible employee of the appellant, was one of inference and fact to be drawn from that evidence. Now, in referring to that affidavit I do not overlook Mr. Hayman's objection to the introduction of that affidavit in these proceedings. It does seem to me that in a case where a Provincial Court Judge does not refuse to state a case, but actually states one, in which he sets out his findings of fact, that the affidavit is probably not properly admissible. It is not necessary to decide that question finally on this appeal, and I do not wish to be understood as doing so. I have simply referred to it as material put forward by the appellant to support his contention, and in my view it not only fails to support his contention, it rebuts it.

For these reasons I would dismiss the appeal.

MACLEAN, J.A.:—I agree.

NEMETZ, J.A.:—I would dismiss the appeal for the reasons given by my brother McFarlane save and except the first point raised by Mr. Gardner as to whether or not s. 766(1), might be available under certain circumstances. With that exception I agree entirely with what my brother has said.

MACLEAN, J.A.:—The appeal is dismissed.

Appeal dismissed.

REGINA v. CHURCHILL COPPER CORPORATION LTD.

British Columbia Provincial Court, Arkell, D.C.J. *May 28, 1971.*

Environmental law — Water pollution — Discharge of deleterious substance into waters frequented by fish — Whether mens rea essential ingredient of offence — Fisheries Act, R.S.C. 1952.

The offence of depositing or permitting a deposit of a deleterious substance of any type in water frequented by fish created by s. 33(2) (rep. & sub. 1969-70, c. 63, s. 3(1)) of the *Fisheries Act*, R.S.C. 1952, c. 119 (now R.S.C. 1970, c. F-14) is an offence of strict liability and *mens rea* is not an essential ingredient. Even if *mens rea* were required once it is shown that a responsible employee of a defendant company has knowledge of the act complained of, *mens rea* is established.

[*R. v. Pierce Fisheries Ltd.*, [1970] 5 C.C.C. 193, 12 D.L.R. (3d) 591, [1971] S.C.R. 5, 12 C.R.N.S. 272, apld; *Sweet v. Parsley*, [1969] 2 W.L.R. 470, [1969] 1 All E.R. 347, refd to]

Environmental law — Water pollution — Sentence — Protection to society and deterrent to others — Five-thousand dollar fine plus order refraining company from depositing substance in river — Fisheries Act, R.S.C. 1952, s. 33(7).

TRIAL of accused on a charge of depositing deleterious substance in river contrary to *Fisheries Act* (Can.).

I. J. Nathanson, for accused.
R. M. Hayman, for the Crown.

ARKELL, D.C.J.:—Churchill Copper Corporation Ltd. were charged that near the confluence of the Racing River and Delano Creek in the Province of British Columbia, between February 12 and 25, 1971, they did unlawfully deposit a deleterious substance in the said Racing River, being water frequented by fish, contrary to the provisions of the *Fisheries Act*, R.S.C. 1952, c. 119 [now R.S.C. 1970, F-14], and amendments thereto.

On Tuesday, May 4, 1971, the said charge was heard before me at the Court-house in the Village of Fort Nelson by way of summary conviction.

The relevant provisions of the *Fisheries Act*, as amended on June 26, 1970 [rep. & sub. 1969-70, c. 63, s. 3], are as follows:

> 33(2) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance that results from the deposit of such deleterious substance may enter any such water.
>
> (5) Any person who violates any provision of this section is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars for each offence.
>
> (6) Where an offence under subsection (5) is committed on more than one day or is continued for more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.
>
> (7) Where a person is convicted of an offence under this section, the court may, in addition to any punishment it may impose, order that person to refrain from committing any further such offence or to cease to carry on any activity specified in the order the carrying on of which, in the opinion of the court, will or is likely to result in the committing of any further such offence.
>
> (8) In a prosecution for an offence under this section or section 33B, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.
>
> (11) For the purposes of this section and section 33A,
>
> (*a*) "deleterious substance" means
>
> (i) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered deleterious to fish or to the use by man of fish that frequent that water, or

Churchill Copper Corporation Ltd. leased district Lot 1369 in the Peace River District, containing 356 acres and encompassing the confluence of the Racing River and Delano Creek for mill site and town site purposes on June 28, 1968, for a period of five years, and between February 12 and 25, 1971, the said Churchill Copper Corporation Ltd. were operating a copper mine and a mill for refining copper situated and located at the confluence of the Racing River and Delano Creek.

Discharge effluent was carried by a flume from the refining mill to a settling pond contained within a dyke, and the settling pond had overflowed and was overflowing between February 10th and February 24th, causing a greyish black effluent to run from the settling pond into the Racing River.

The water within the Racing River above the mill site was clear in colour and contained sufficient taxa (fish food) to support fish life, whereas downstream from the mill site the colour of the river was greyish black, being caused by a six-inch deposit of silt and fine powder-like slime which, when microscopically examined, was irregular in shape, had sharp edges and was highly abrasive. At a point approximately 400 yd. downstream from the mill site there were not sufficient taxa in the water to support fish life, and the effluent from the mill which had overflowed from the settling pond had degraded the water quality to the point where it was detrimental to fish and could even be toxic to fish life, causing their death, and was, in fact, a deleterious substance, as stated in evidence by Morley Edward Pinsent, B.Sc., M.Sc., Regional Fisheries Biologist, the Wildlife Branch, Department of Recreation and Conservation, Province of British Columbia.

Three local fishermen stated in evidence that they had caught a considerable number of grayling and Dolly Varden fish in both the Delano Creek and the Racing River, and from this evidence I found as a fact that the Racing River was water frequented by fish.

After holding a *voir dire* the evidence disclosed that the local superintendent of the Churchill Copper Corporation Ltd. mill had stated on February 11, 1971, to the local conservation officer, "The settling pond is frozen and has been running over for the last four days", and from this evidence I found as a fact that the mill superintendent, as a responsible employee of the defendant company, had knowledge of the discharge of the effluent, being a deleterious substance, from the mill settling pond into the Racing River.

The majority of the submissions of the defence were directed to whether or not the Court should accept or reject certain evidence. Since I accept the evidence of the witnesses called for the prosecution, and their evidence stands uncontradicted, I have drawn certain inferences from that evidence, and have made my findings of fact accordingly.

On the question of the applicable law, it was submitted by defence counsel that the element of "mens rea" is an essential ingredient of this offence. It was submitted by Crown counsel that the Court should follow the decision of the Supreme Court of Canada in *R. v. Pierce Fisheries Ltd.*, [1970] 5 C.C.C. 193, 12 D.L.R. (3d) 591, [1971] S.C.R. 5.

In *R. v. Pierce Fisheries Ltd.* the Supreme Court of Canada held that the offence of violating s. 3 (1) (*b*) of the Regulations to the *Fisheries Act* is an offence of strict liability, of which "mens rea" is not an essential ingredient. At p. 202 Ritchie, J., states:

> In considering the language of the Regulation, s. 3(1) (*b*), it is significant, though not conclusive, that it contains no such words as "knowingly", "wilfully", "with intent", or "without lawful excuse", whereas such words occur in a number of sections of the *Fisheries Act* itself which create offences for which *mens rea* is made an essential ingredient.
>
> . . . . .
>
> This appears to me to be a clear indication of the fact that in making provision for offences under the *Fisheries Act*, Parliament was careful to specify those of which it intended that guilty knowledge should be an essential ingredient.

Also in the *Pierce Fisheries* decision, Ritchie, J., referred to the English case of *Sweet v. Parsley*, [1969] 2 W.L.R. 470, [1969] 1 All E.R. 347, where Lord Pearce states at p. 431:

> Parliament might, of course, have taken what was conceded in argument to be a fair and sensible course. It could have said, in appropriate words, that a person is to be liable unless he proves that he had no knowledge or guilty mind. Admittedly, if the prosecution have to prove a defendant's knowledge beyond reasonable doubt, it may be easy for the guilty to escape. But it would be very much harder for the guilty to escape if the burden of disproving mens rea or knowledge is thrown on the defendant. And if that were done, innocent people could satisfy a jury of their innocence on a balance of probabilities. It has been said that a jury might be confused by the different nature of the onus of satisfying "beyond a reasonable doubt" which the prosecution have to discharge and the onus "on a balance of probabilities" which lies on a defendant in proving that he had no knowledge or guilt. I do not believe that this would be so in this kind of case.

Also in *Sweet v. Parsley*, Lord Diplock states at p. 487:

> Where penal provisions are of general application to the conduct of ordinary citizens in the course of their everyday life the presumption is that the standard of care required of them in informing themselves of facts which would make their conduct unlawful, is that of the familiar common law duty of care. But where the subject-matter of a statute is the regulation of a particular activity involving potential danger to public health, safety or morals in which citizens have a choice as to whether they participate or not, the court may feel driven to infer an intention of Parliament to impose by penal sanctions a higher duty of care on those who choose to participate and to place upon them an obligation to take whatever measures may

> be necessary to prevent the prohibited act, without regard to those considerations of cost or business practicability which play a part in the determination of what would be required of them in order to fulfil the ordinary common law duty of care. But such an inference is not lightly to be drawn, nor is there any room for it *unless there is something that the person on whom the obligation is imposed can do directly or indirectly, by supervision or inspection, by improvement of his business methods or by exhorting those whom he may be expected to influence or control, which will promote the observance of the obligation* (see *Lim Chim Aik* v. *The Queen* [1962] A.C. 160, 174).

(The italics are my own for emphasis.)

Parliament, in the 1969-70 amendments to the *Fisheries Act*, obviously adopted the "fair and sensible course" suggested by Lord Pearce in *Sweet v. Parsley* when they enacted s-s. (8) of s. 33.

Also, as stated by Lord Diplock in *Sweet v. Parsley*, the inference is not to be lightly drawn that this is an offence of absolute liability, "*unless* there is something that the person on whom the obligation is imposed can do directly or indirectly, by supervision or inspection, by improvement of his business methods or by exhorting those whom he may be expected to influence or control, which will promote the observance of the obligation". Here the defendant company could "promote the observance of the obligation" imposed by the *Fisheries Act* by the adoption of direct supervision, inspection and improvement of their operation.

In s-s. (2) of s. 33 of the *Fisheries Act*, there are no such words as "knowingly", "wilfully", "with intent" or "without lawful excuse", and I am satisfied that this is an Act which is in the public interest, is prohibited under a penalty, and does not " 'add a new crime to the general criminal law' " as stated by Ritchie, J., at p. 279 with reference to the decision in *Sherras v. De Rutzen*, [1895] 1 Q.B. 918.

I am therefore of the opinion that s-s. (2) of s. 33 of the *Fisheries Act* is an offence of strict liability, of which "mens rea" is not an essential ingredient.

Even if I have erred in law and "mens rea" is an essential ingredient of the offence, I am satisfied that it has been established on the knowledge of the superintendent, a responsible employee of the defendant company.

Accordingly, I have found the defendant company guilty as charged. In speaking to sentence, it was submitted by defence counsel that pollution in a river in such a remote area is not as serious as pollution in a river near a city like Vancouver, which is perhaps to suggest that city fish are more important than country fish. The provisions of the *Fisheries*

Act and the penalties to be imposed thereunder are equally applicable to all parts of Canada, remote or otherwise.

To serve as a protection to society, and also as a deterrent, a fine of $5,000 has been imposed, in addition to an order being made pursuant to s-s. (1) of s. 33 that Churchill Copper Corporation Ltd. refrain from depositing or permitting the deposit of any deleterious substance in the Racing River.

Verdict of guilty entered.

NOTE: On August 18, 1971, an application was made to Macdonald, J., for an order pursuant to s. 738 of the *Criminal Code* directing Arkell, D.C.J., to show cause why a case should not be stated. The following is his judgment dismissing the application:

R. C. Gardner, for accused, appellant.
R. M. Hayman, for the Crown, respondent.

MACDONALD, J.:—The appellant moves for an order pursuant to s. 738 of the *Criminal Code*, 1953-54 (Can.), s. 51 [now s. 766, R.S.C. 1970, c. C-34] directing His Honour Judge K. F. Arkell, District Judge of the Provincial Court at Fort Nelson, to show cause why a case should not be stated pursuant to application to him dated May 19, 1971.

The learned Judge on May 4, 1971, acting under Part XXIV of the *Criminal Code*, convicted the appellant upon the charge that "near the confluence of Racing River and Delano Creek in the Province of British Columbia, between the 12th and 25th days of February, 1971, they did unlawfully deposit a deleterious substance in the said Racing River, being water frequented by fish, contrary to the provisions of the Fisheries Act, Chapter 119, and amendments thereto." The application for a stated case alleged that the conviction was erroneous in point of law in six respects. On May 28, 1971, the Judge stated a case as to only one of these grounds. That one clearly involves a question of law. In my opinion grounds numbered 1, 2, 3 and 6 are all questions as to the sufficiency of evidence and therefore the learned Judge was right in declining to state a case respecting them. Ground No. 5 is as follows:

> That your Honour did err in finding that there was any admissible evidence that the offence was committed by an employee or agent of the accused.

I find this question unintelligible. It does not help that the affidavit in support of this application indicates that it intended to propound a question as to admissibility of certain evidence let in by the Judge.

The application must be dismissed.

REGINA v. MACMILLAN BLOEDEL INDUSTRIES LTD.

Provincial Court of British Columbia, Haig-Brown, Prov.Ct.J.
August 2, 1973.

Environmental law — Depositing deleterious substances — Defence that company "exercised all due diligence" — Defence requiring successful communication of adequate instructions from company to employees on job — General instructions only given and vaguely understood — No supervision during operations — Accused convicted — Fisheries Act, R.S.C. 1970, c. F-14, s. 33(2), (8).

TRIAL of the accused on a charge contrary to s. 33 (2) of the *Fisheries Act* (Can.).

A. Sarich, for the Crown.
V. A. Stephens, for accused.

HAIG-BROWN, PROV.CT.J.:—It appears from the evidence that during several days immediately prior to November 28, 1972, four employees of MacMillan Bloedel Industries Ltd. (Eve River Division) undertook a gravel-washing operation near an unnamed tributary of Palmerston Creek, which in turn is a tributary of the Adam River, which enters salt water some 12 miles north-east of Sayward on Vancouver Island, British Columbia. These employees were Gordon William Benner, assistant grade foreman, Peter Charles Daw, cat operator, Nick Seminoff, shovel operator and Les Smith, truck driver. A fifth employee, Allen Gerald Dent, logging manager, closed off the operation on November 28th.

Mr. Benner gave evidence that a hole was dug in such a manner that water flowed into it from a small creek (the tributary of Palmerston Creek, variously referred to as the Unnamed Creek or Tributary A, and hereinafter referred to as Tributary A). The gravel was washed in this hole by dipping the bucket of the shovel. He said that before washing, the gravel "didn't stand up too good", but after washing, it was "harder and drier and packed down better". Water from the pit overflowed across the road and back into the creek. He estimated the creek to be 3 to 6 in. deep and 2 ft. wide. He noticed on the last day of operation that the creek was murky.

Mr. Daw said that he dug a hole and let water in from the creek, Tributary A. He estimated the creek to be 5 to 6 in. deep and 3 ft. wide. He said the gravel was "kind of mushy" and they were trying to "clean the material to get the muck out". He did not see any overflow from the pit but "some leaked into the creek and some out across the road." He said "we looked down at the creek on the last day and it was murky looking". In cross examination he said: "I know you are not supposed to go and mess around with rivers." The decision to do so was made in discussion with Mr. Benner, his superior. He described the water coming in from the creek as a "trickle".

Mr. Seminoff, the shovel operator, said that the water coming into the hole or pit, dug by himself and the cat operator, was diverted from the creek. He estimated Tributary A to be 3 ft. wide and not over 6 in. deep. The pit was 15 ft. x 20 ft. and 5 ft. deep. The operation continued for three or four days. The truck moved 12 yd. of washed gravel each trip at the rate of four trips an hour through seven-hour productive days. He also noted that the creek was murky on the last day, apparently referring to Palmerston Creek, "5,000' downstream from where we were working".

Mr. Vernon Duncan Skogan, a boom man for the company, said he had observed salmon 600 to 800 ft. into Palmerston Creek from the Adam River and had also observed salmon carcases washed down from higher up. He said that he travelled daily to work over a small bridge across Palmerston Creek 800 to 900 ft. above its confluence with Adam River. In the latter part of November he noted that the creek was very discoloured and that this was a cause of discussion among employees of the company.

From the above evidence I conclude without difficulty that employees of the respondent company conducted a gravel-washing operation in a pit near Tributary A for some four days in late November, 1972, probably November 24th to 27th, until they were stopped on November 28th. There is conflict as to the state of the weather, but there can be no doubt that conditions were very wet and there had been some heavy rain. A substantial quantity of gravel was washed, probably in excess of 1,300 cubic yards. The operation was successful in that mushy material that would not pack or settle was converted into drier and harder material that packed down fairly well. It is clear that the washing removed substantial quantities of fine and soft material to achieve this objective.

There is some uncertainty as to the amount of flow that was entering and leaving the pit, and Mr. Seminoff's evidence of the size of the pit at 15 ft. x 20 ft. conflicts with the later evidence of fisheries supervisor Fielden that it was 100 ft. x 75 ft. Mr. Fielden's evidence is supported by rather unclear photographs (ex. 8), but I conclude without difficulty that the pit was very much larger than 15 ft. x 20 ft. and that Mr. Fielden's estimate is probably quite close.

As to the amount of water that was flowing into the pit, the preponderance of evidence is that at least a major portion of Tributory A was diverted into the pit and, with some allowance for seepage, a similar amount was flowing out and finding its way back into the creek. Some of the witnesses did not notice overflow across the road until the last day, but their evidence also indicates that they did not notice the murky state of the creek until the last day of the operation when, presumably, their attention was drawn to it.

Fisheries supervisor Fielden made an inspection of the site and the general area on November 29th. He followed Tributary A to Palmerston Creek, making several stops on the way and noticing that the bottom of the creek was "very, very silty". Fifty feet below the road he put a stick in the creek and measured "6" of mud on the bottom". Two hundred and fifty

feet farther down he measured 3 in. of mud. At Palmerston Creek he went 75 to 100 ft. downstream of the entry of the Tributary A and found half an inch of mud. He went upstream from the entry of Tributary A on Palmerston Creek and found "no visible evidence of mud".

He then drove down Palmerston Creek to the bridge and there found visible deposits of fresh mud. He observed no fresh silt at the confluence of Palmerston Creek and Adam River.

On November 30th, Mr. Fielden returned to the area and took bottom samples from Tributary A and Palmerston Creek at several points. These samples became exs. 3 to 7 in the present proceedings and are Nos. 1 to 5 in the analyst's report (ex. 15). Sample 1 (ex. 3) from Tributary A 50 ft. downstream from the gravel pit, and sample 2 (ex. 4) from Palmerston Creek 100 ft. downstream from the entry of Tributary A, each showed 100% of fine material, classified by sieve analysis as containing 60.2% and 53.5% of silt respectively. In contrast to this, sample 3 (ex. 5) taken from Palmerston Creek 75 ft. upstream of the entry of Tributary A. showed only 57.7% fine, of which 0.2% analyzed as silt; sample 5 (ex. 7) taken from Tributary A, 50 ft. upstream from the road, showed only 5.7% of fines and 0.11% of silt.

Taken with the evidence of the men who worked the gravel-cleaning operation, I hold these samples to be inescapable and conclusive evidence that large amounts of fine materials, more than half of it silt (smaller than .074 mm. diameter as defined by Mr. Langer) was washed down and deposited in Tributary A and beyond there into Palmerston Creek from the gravel washing of the previous days. I can find no other rational conclusion.

Mr. Otto Emil Langer, a biologist and a specialist in fisheries biology, employed by the Department of Environment, gave expert evidence as to the effects of such material on fish life. He pointed out that fines (a term that includes larger material such as sand) enter the gravel, decrease its permeability and can thereby reduce the survival of eggs, alevins and fry. Such entry may cause eggs and fry to suffocate and may form a barrier to fry emerging from the gravel. In addition, it may smother invertebrates on which the young fish feed and the coarser material such as sand has an abrasive effect that removes algae from the rocks. This abrasive material may also damage the gills of both adults and fry, possibly to the point of suffocation. He noted that sediment "has a greater effect on [fish] survival than any other factor" and was of the opinion that the material in Mr. Fielden's samples from points downstream of the pit would have been deleterious substances and "not hospitable for survivial". He said that much of the material would have been deposited in the "meandering, low energy area of the stream where salmon spawn" and in the month of November would have been harmful to eggs and alevins and might prevent the emergence of fry from the gravel later on.

Referring to his own samples, Nos. 1a to 5a in ex. 15 (exs. Nos. 10 to 14) taken March 28, 1973, from approximately the same places as Mr. Fielden's samples, Mr. Langer pointed out that lesser amounts of fines and silts were to be expected in March than in November because of flushing, and pointed out that this was confirmed by reduced amounts of both fines and silt in samples 3a and 5a respectively, taken from Palmerston Creek above the entry of Tributary A and from Tributary A above the gravel pit.

For the defence, Mr. Terrence Edward Howard, a water quality research specialist with the B. C. Research Council, gave expert evidence. He felt that he would have conducted the investigation somewhat differently and was of the opinion that much of the materials analyzed as less than .074 mm. in diameter in ex. 15 would not have settled out in 24 hours (67%). He qualified this by saying that much depends on "the type, concentration and duration of the exposure". He was of the opinion that fines and silt are capable of harming fish. He also was of the opinion that salmon could not pass the log jam obstruction upstream of the bridge that was present at the time of his visit March 26, 1973. In cross-examination, Mr. Howard agreed that it was not impossible for materials less than .074 mm. in diameter to settle out, especially if flowing along the stream bottom. He readily accepted certain findings to this effect referred to in International Pacific Salmon Fisheries Commission Bulletin No. XVIII (1965) dealing with the effects of transported stream sediments. He again agreed that silt and temperature in streams are major factors affecting the production of fish.

From the evidence of both prosecution and defence experts, I am able to conclude, with complete safety, that the material I have found to have been deposited in Tributary A and Palmerston Creek by the gravel-washing operations of November, 1972, is deleterious within the meaning of the Act and potentially extremely harmful to fish and other aquatic life. I find further that the nature of the material is such that much of it would be readily transported downstream and in the course of such transportation significant quantities of it, especially of that part entrained near the stream bottom, would be deposited on the productive gravel and drawn into it. These effects, having regard to the quantity of the material, the evidence of displacement afforded by the samples of November, 1972, and March, 1973, and the visual observations of Mr. Skogan and Mr. Fielden in late November, 1972, extended a great distance downstream, certainly into water frequented by fish.

I have considered s. 33(8) [enacted R.S.C. 1970, c. 17 (1st Supp.), s. 3(2)] of the *Fisheries Act*, R.S.C. 1970, c. F-14, which sets up certain defenses for an employee. I find from the evidence that the employees on the gravel pit job had not been adequately instructed by the company. The strongest claim put forward is that they had received "general instructions"; the evidence of the employees all too clearly shows that this was only vaguely and generally understood. There was no attempt whatsoever in advance of the gravel washing to ascertain its possible consequences, and there was no attempt whatsoever to check for such consequences at any time during the operation. There was no check or supervision of the operation by senior officials during the four days it continued. I find that this falls far short of the "exercise of all due diligence" referred to in s. 33(8). I would emphasize, as I have before, that "due diligence", in my opinion, requires successful communication of adequate information and instructions from the company right down to the man on the job.

I find the defendant company: Guilty.

Accused convicted.

BRITISH COLUMBIA COUNTY COURT

Cashman Co. Ct. J.

Pacific Logging Company Limited v. The Queen ex rel. Gosling

Fisheries — Putting debris in water frequented by fish — Logging done by independent contractor for owner — Onus of proof of offence under The Fisheries Act, R.S.C. 1970, c. F-14, s. 33(3).

Appellant was charged with knowingly and unlawfully putting or permitting to be put debris into water frequented by fish, contrary to s. 33(3) of the Fisheries Act. It had, by written agreement, contracted with the M. company, a wholly-owned subsidiary of appellant, to log certain lands of which it was the owner; the M. company had subcontracted the work to another, by whom the alleged offence had been committed.

Held, the Crown had failed to establish that the alleged offence was committed by an agent or employee of appellant; the fact that the M. company was wholly owned by appellant and the fact that appellant's logging supervisor gave directions as to how the work was to be done did not, without more, give rise to the relationship of employer and employee, or principal and agent: *McAllister v. Bell Lumber and Pole Co.*, 45 B.C.R. 30, [1931] 3 W.W.R. 767, [1932] 1 D.L.R. 802; *Performing Right Society v. Mitchell & Booker (Palais de Danse) Ltd.*, [1924] 1 K.B. 762; *St. John v. Donald*, [1926] S.C.R. 371, [1926] 2 D.L.R. 185 applied.

[Note up with 11 C.E.D. (West. 2nd) *Fisheries*, s. 12.]

R. B. Hutchison, for appellant.

A. I. MacDonald, for the Crown.

3rd May 1974. CASHMAN Co. Ct. J.:—This is an appeal from a conviction made 27th June 1973 by the learned Provincial Judge under s. 33(3) of the Fisheries Act, R.S.C. 1970, c. F-14, and comes before this Court by way of trial de novo pursuant to s. 68 of that Act.

The facts are that the appellant company owns certain lands situate on Little Shaw Creek located approximately 20 miles west of Lake Cowichan. By an agreement made 3rd January 1972 the appellant company agreed with T. W. MacKenzie Logging Ltd. (hereinafter referred to as "MacKenzie Logging") that it would log the timber situate on that property. MacKenzie Logging in turn subcontracted the falling of the timber to Lens Logging Ltd. MacKenzie Logging is a wholly-owned subsidiary of the appellant company and Lens Logging Ltd. is owned 50 per cent by MacKenzie Logging and 50 per cent by private individuals. Between 1st March 1973 and 1st May 1973 Gordon Gosling, a conservation officer employed by the Fish and Wildlife Branch of the provincial government, viewed the site of the logging operation and took a number of photographs, 17 of which were entered as exhibits. These photographs clearly show that logs and debris were in fact put into the creek.

There is no evidence as to who felled the logs or allowed the debris to enter the creek, although one may reasonably draw the inference that this must have been done by employees of Lens Logging Ltd.

The place where the logs were felled and debris entered Little Shaw Creek is above a waterfall and it is clear that no fish frequent that part of the stream.

After the charges were laid, Mr. Gosling and a biologist from the Fisheries Department visited the stream below the falls and found trout and coho fry present at that point. A photograph entered as Ex. 2Q shows the lower reaches of the stream and appears to show a normal creek and indeed that was the biologist's evidence. The evidence of the biologist and Mr. Gosling indicates to me that whatever debris entered the stream above the falls had little or no effect on the fish or fry found below the falls.

Mr. Patrick Solmie, the logging supervisor for the appellant company, was called by the Crown and he testified that he was in charge of the Little Shaw Creek area and responsible for telling the operator how to conduct his operations. The agreement of 3rd January 1972 required MacKenzie Logging to observe all laws applicable to this operation and included in para. 6 (see the following proviso):

"6. The Contractor covenants and agrees to observe and carry out: . . .

"c) All orders and regulations of the Government of Canada now or hereafter in force relating in any way to logging, booming or hauling operations herein contemplated".

On 14th February 1973 Mr. Solmie wrote the Fish and Wildlife Branch at Nanaimo and enclosed a copy of the logging plan for 1973 which included the Little Shaw Creek area and inquired as to what would be required in order to provide for the protection of fish and wildlife. No reply was ever received to that letter until 28th May 1973 after the charges had been laid and no reference to the Little Shaw Creek is made in that reply.

The information upon which the conviction was founded reads in part as follows:

"That Pacific Logging Ltd. being engaged in logging during the period March 1, A.D. 1973 and May 1, A.D. 1973 at or near Little Shaw Creek in the Province of British Columbia did knowingly and unlawfully put or permit to be put debris into water frequented by fish or that flows into such water."

After the evidence was concluded, the Crown applied for an amendment to the information as it was evident that the information as originally laid was duplicitous. That amendment was allowed and reasons given for so doing were delivered at that time.

The Information before the Court then read, in part, as follows:

"That Pacific Logging Ltd. being engaged in logging during a period March 1, A.D. 1973 and May 1, A.D. 1973 at or near Little Shaw Creek in the Province of British Columbia, did knowingly and unlawfully permit to be put debris into water that flows into water frequented by fish".

The appellant elected to call no evidence on the charge as originally laid and when given an opportunity to do so on the amended information, again elected to call no evidence.

The charge here is laid under s. 33(3) of the Fisheries Act. By an amendment in 1970 (contained in R.S.C. 1970, c. 17 (1st Supp.), s. 3), s. 33 was amended to include a further subsection relating to proof of the offence and designated as subs. (8).

The subsections applicable to this case therefore are the following subsections:

"(3) No person engaging in logging, lumbering, land clearing or other operations, shall put or knowingly permit to be put, any slash, stumps or other debris into any water frequented by fish or that flows into such water, or on the ice over either such water, or at a place from which it is likely to be carried into either such water . . .

"(8) In a prosecution for an offence under this section or section 33.4, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission."

This being a federal statute it is within the competence of Parliament to pass legislation penal in nature and where a statute uses the word "knowingly" that word must be interpreted in its ordinary meaning. In this case the Crown must prove knowledge on the part of the appellant. There is no evidence that Mr. Solmie was aware that logs and debris had been allowed to enter Little Shaw Creek or that he was in the vicinity of the Little Shaw Creek logging operation between the periods specified in the information. The Crown asks that I impute such knowledge to the appellant from the mere fact that Mr. Solmie had the power to direct the manner in which the operator would conduct the logging operation.

In my view to draw such an inference I must find that that power is consistent with knowledge of what did occur and inconsistent with any other rational conclusion. On those bare facts I am not prepared to draw the inference of knowledge the Crown seeks to have me draw.

If subs. (3) stood alone, as it did before the addition of subs. (8), I would have little difficulty in finding that the Crown has failed to prove the guilt of the appellant beyond a reasonable doubt as is incumbent upon the Crown in this as in every other case criminal in nature.

However subs. (8) provides that if the Crown establishes that the offence was committed by an "*employee* or *agent* of the accused" (the italics are mine) then the accused must establish "that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission."

The appellant contended that neither MacKenzie Logging nor Lens Logging Ltd. comes within either of the categories specified in the statute and submits, firstly, that both of these persons are in any event independent contractors and, secondly, that even if MacKenzie Logging is an agent or employee of the appellant, then the appellant's liability cannot extend to responsibility for agents or employees of MacKenzie Logging, and submits that if Lens Logging Ltd. is an agent or employee of MacKenzie Logging it is not either an agent or employee of the appellant.

There is no evidence as to the precise relationship between MacKenzie Logging and Lens Logging Ltd. The evidence is simply that Lens Logging Ltd. did the falling and that being so that company must be the party that placed the logs and debris in Little Shaw Creek.

The Fisheries Act as amended contains various definitions but I am unable to find in the statute any definition of either "agent" or "employee". The Interpretation Act, R.S.C. 1970, c. I-23, does not define either of these terms.

The agreement made between the appellant and MacKenzie Logging contains the following paragraph:

"26. It is expressly understood and agreed between the parties that the relationship between them herein is that of principal and independent contractor and the employees of the Contractor are not to be deemed to be employees or agents of Pacific in any respect."

It is not seriously contended that MacKenzie Logging was an agent of the appellant and in my view no such relationship arises in the circumstances of this case. The contract

does not grant any authority, expressed or implied, in MacKenzie Logging to act on behalf of the appellant and certainly there is no evidence that the appellant ever ratified anything done by MacKenzie Logging.

We are therefore left with the question of whether MacKenzie Logging can be said to be an "employee" of the appellant. If MacKenzie Logging is not an employee of the appellant then it matters not what relationship existed between MacKenzie Logging and Lens Logging Ltd.

The contract clearly specifies that MacKenzie Logging is not either an agent or an employee of the appellant. However the fact is that the logging supervisor of the appellant says that he was responsible for telling the operator, that is to say, MacKenzie Logging, how to conduct his operation.

The general proposition is that a servant is a person subject to the control of his master as to the manner in which he is to do his work, whereas an independent contractor is one who undertakes to produce a given event and is not under the order or control of the person for whom he does it and may use his discretion in things not specified beforehand: *McAllister v. Bell Lumber and Pole Co.*, 45 B.C.R. 30, [1931] 3 W.W.R. 767, [1932] 1 D.L.R. 802.

In *Performing Right Society v. Mitchell & Booker (Palais de Danse) Ltd.*, [1924] 1 K.B. 762 at 767, McCardie J. had this to say:

" . . . the question whether a man is a servant or an independent contractor is often a mixed question of fact and law. If, however, the relationship rests upon a written document only, the question is primarily one of law. The contract is to be construed in the light of the relevant circumstances."

That passage was cited by Anglin C.J.C. in *St. John v. Donald*, [1926] S.C.R. 371 at 381, [1926] 2 D.L.R. 185. In that case the contract gave wide power to the city to control the acts of the contractor and contained these words [p. 380]: "The contractor shall attend to, and execute, without delay all orders and directions which may from time to time be given by the engineer in connection with the contract".

At p. 381, the learned Chief Justice went on to say this:

"Wide as are the powers of interference and control thus reserved to the city, their mere existence does not *in se* suffice to make the contractor and his workmen in carrying out the work contracted for the servants of the city. It may as Sir Frederick Pollock says (Law of Torts, 12th Ed., p. 80-81), sometimes

" 'be a nice question whether a man has let out the whole of a given work to an "independent contractor" or reserved so much power or control as to leave him answerable for what is done.'

"But in the absence of actual interference by the employer or his representative in exercise of the power thus reserved resulting in the injury for which damages are claimed — here there was none — the authorities seem to be reasonably clear that the mere reservation, to quote Smith's Law of Master and Servant, (7th Ed., p. 238).

" 'by contract (of) general rights of watching the progress of works which the contractor has agreed to carry out for him, of deciding as to the quality of the materials and workmanship, of stopping the works or any part thereof at any stage, and of dismissing disobedient or incompetent workmen employed by the contractor will not of necessity render (the employer) liable to third persons for the negligence of the contractor in carrying out the works.' "

Following that he then sets out the passage from *Performing Right Society v. Mitchell & Booker*, supra, quoted above and then goes on to say this:

"He proceeds to discuss the criteria indicated by the authorities for determining whether the relationship of the employed to the employer is that of independent contractor or of servant, and then says that

" 'The final test, if there be a final test, and certainly the test to be generally applied, lies in the nature and degree of the detailed control over the person alleged to be the servant. This circumstance is, of course, only one of several, but it is usually of vital importance.' "

Applying those tests to the circumstances here I am of the opinion that the Crown has failed to establish that what was done here was done by an agent or employee of the appellant and that being so the onus imposed by subs. (8) does not apply in the circumstances of this case.

The fact that MacKenzie Logging is a wholly-owned subsidiary of the appellant does not make that company an employee or agent. The association of these companies may affect their respective liabilities in other areas of the law but that does not alter the basic proposition that each corporation is a separate legal entity.

In any event I might say that had I found that subs. (8) applied here I would have been satisfied that the appellant has established, in the sense that that term has been judicially defined in *Regina v. Appleby*, [1972] S.C.R. 303, [1971] 4 W.W.R. 601, 16 C.R.N.S. 35, 3 C.C.C. (2d) 354, 21 D.L.R. (3d) 325, as part of the Crown case that it did not consent to the commission of the offence and did exercise due diligence to prevent its occurrence. The agreement and the letter of 14th February 1973 clearly indicate that to be the case.

The appellant served notice under The Constitutional Questions Determination Act, R.S.B.C. 1960, c. 72, upon the Attorney General for British Columbia and the Attorney General for Canada. No one appeared on behalf of the Attorney General for Canada and Crown counsel stated that he had received no instructions from the Attorney General for British Columbia on this aspect of the matter. Mr. Hutchison argued that s. 33(3) does not regulate fishing but rather attempts to regulate logging and land clearing being matters of property and civil rights which can only be legislated upon by the province.

As I have found that the Crown has failed to prove the offence charged, as amended in this Court, I refrain from dealing with the constitutional question.

The appeal is allowed and any fines paid shall be returned to the appellant.

REGINA v. JACK CEWE LTD.

County Court of Westminster, British Columbia, Grimmett, Co.Ct.J.
January 30, 1975.

Environmental law — Water pollution — Permitting deposit of sediment in river — Offence of strict liability — Accused attempting to control deposit of sediment — Abnormal amount of rainfall rendering accused's precautions useless — Defence of Act of God available — Accused should be acquitted — Fisheries Act, R.S.C. 1970, c. F-14, s. 33(2).

[*R. v. Pierce Fisheries Ltd.*, [1970] 5 C.C.C. 193, 12 D.L.R. (3d) 591, [1971] S.C.R. 5, 12 C.R.N.S. 272, [1965-69] 3 N.S.R. 1; *R. v. McTaggart* (1972), 6 C.C.C. (2d) 258, [1972] 3 W.W.R. 30, refd to]

Environmental law — Water pollution — Permitting deposit of sediment in river — Evidence that because of abnormal conditions on date charged sediment would have entered the river regardless of accused's operation — Accused acquitted — Doubt whether accused "permitted" deposit — Fisheries Act, R.S.C. 1970, c. F-14, s. 33(2).

APPEAL by the accused by way of trial *de novo* from its conviction for unlawfully depositing sediment in a river contrary to s. 33(2) of the *Fisheries Act* (Can.).

D. D. G. Milne, for accused, appellant.
D. R. Kier, for the Crown, respondent.

GRIMMETT, CO.CT.J.:—This is an appeal from the conviction and sentence by the Provincial Court of the appellant on the charge that "JACK CEWE LTD., on or about the 21st day of December, A.D. 1972, did unlawfully permit the deposit of a deleterious substance, sediment, in water frequented by fish, to wit: the Coquitlam River, in the Municipality of Coquitlam, in the Province of British Columbia". The sentence imposed was a fine of $3,500.

The appellant, a body corporate, carries on, *inter alia*, the operation of a gravel pit adjacent to the Coquitlam River in the Municipality of Coquitlam and has done so since 1952. The operation includes the digging, removal and sale of gravel from the pit. The appellant's property has an area of 360 acres of which 25 to 30 acres have been developed in the pit operation.

Mr. Langer, a qualified expert in biology and fish life, testified that on December 21, 1972, he found large deposits of sediment in the Coquitlam River, more particularly at the points marked .13 to .19 shown on the sketch (ex. 2).

It was admitted that the Coquitlam River is a river frequented by fish and I am satisfied by the evidence of Mr. Langer that the sediment found in the river on the day in question would be deleterious to fish. The only question therefore remaining to be determined is whether the appellant permitted the deposit of the sediment in the river.

In order to determine this question it is necessary, in my opinion, to discuss the nature of the property, the actions of the appellant over the years and the weather during the period in question.

As mentioned above, the gravel pit is adjacent to the Coquitlam River and there is no doubt there have been problems in the past — in particular from slide areas which are indicated by red arrows on the sketch (ex. 2). The appellant realized the problem existed and in fact hired a civil engineer, Mr. Cunliff, in 1967 to investigate and solve the problem of the loss of prime material to the Coquitlam River. Mr. Cunliff reported in 1968. Later, in co-operation with the Municipality of Coquitlam, settling basins were constructed in an effort to solve the problem. Apparently, these settling ponds were not effective and washed out during the period in question. Mr. Cunliff testified that the average rainfall for this area for the month of December is 20.49 inches (see ex. 26). A check of the daily precipitation in December for Coquitlam Lake (considered to be the same as the area in question) covering a 10-year-period, indicates a high total for the month to be 45.02 inches and a low of 14.83 inches and for the month of December, 1972, 33.30 inches. It is also interesting to note that the rainfall during the six days preceding December 21st (the day in question) was 16.71 inches, a little over the half of the total for the whole month of December and was followed by 1.55 inches on December 21st. According to Mr. Cunliff this amount of precipitation would carry silt, sediment and even gravel. Mr. Cunliff further testified, and it must be emphasized he is an engineer with considerable experience, that it would be very difficult to say that the removal of gravel by the appellant increased the amount of silt going into the river.

Mr. Hazelaar, an employee of the Municipality of Coquitlam, testified that he has inspected the gravel pits in the municipality since 1970, that he conducted tests on 14 gravel pits, that the municipality is trying to minimize the amount of silt entering the Coquitlam River, that so far no solution has been found, that with streams flowing into the Coquitlam River through settling ponds the sediment will not settle if there is a heavy flow, that the appellant has tried to find a solution to the problem and on December 21, 1972, could not have done anything more and that if it ceased operation it would not improve the situation. He did, however, testify that the appellant's operation increases the possibility of silt getting into the river.

He also testified that if no gravel pit had ever been there, there would be no problem on two streams but it would be impossible to control two other streams. He further testified that the situation was controlled in 1973, but, unfortunately, we do not have any evidence of the amount of precipitation for 1973, which, of course, would have a bearing on the effectiveness of the measures taken in that year.

Mr. Cewe, president of the appellant company, testified that settling ponds had been built with their engineer's advice and under the supervision of the Municipality of Coquitlam. He also testified that on December 21, 1972, and prior to that, the operation of the gravel pit had never contributed to the sediment in the river. He further testified that he and the appellant had entered into an agreement with the Municipality of Coquitlam which will result in this area becoming a beautiful park — and that the appellant is contributing to a trust fund to be used in the development of the park. The contribution is 3.5¢ per ton on all material removed from the property.

There is no doubt that in this charge under s. 33(2) [am. R.S.C. 1970, c. 17 (1st Supp.), s. 3(1)] of the *Fisheries Act*, R.S.C. 1970, c. F-14, there is an absolute prohibition and *mens rea* may not be proven: see *R. v. Pierce Fisheries Ltd.*, [1970] 5 C.C.C. 193, 12 D.L.R. (3d) 591, [1971] S.C.R. 5, and *R. v. McTaggart* (1972), 6 C.C.C. (2d) 258, [1972] 3 W.W.R. 30. This, of course, would not be the case if an Act of God were involved. It has been argued by the Crown that the amount of rainfall during the period could reasonably have been expected and would therefore not be an Act of God but I am not satisfied as to this proposition. The amount of rainfall which fell in the six-day period preceding the date of the alleged offence would, in my opinion, amount to an Act of God. In addition, the evidence of Mr. Cunliff and Mr. Cewe to the effect that this silt or sediment would have entered the river regardless of the operation of the appellant creates a doubt in my mind that the appellant "permitted" the deposit of the sediment in the river. I believe this to be a reasonable doubt and the appellant shall have the benefit of it.

The charge is dismissed. The appeal is allowed and there will be an order for the return of the fine.

Appeal allowed.

PART II

UNREPORTED JUDGEMENTS UNDER SECTION 33 OF THE FISHERIES ACT

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Provincial Court, Judge G.P. Hogg

ISSUES INVOLVED IN UNREPORTED JUDGMENTS

UNDER SECTION 33 OF THE FISHERIES ACT

	Defendant	Offence	Facts	Relevant Sections	Issues Argued
1	Reichhold Chemicals	33(2)	phenols		defective evidence, waters frequented by fish, acquital
2	Kamloops Pulp and Paper	33(2)	silting/stream	33(6) 33(8)	mud slide from road construction by contractor (agent), $5000 fine
3	Weyerhaeuser	33(3)	mill debris		debris into water, knowingly essential ingredient in information under subsection 33(3), acquital
4	Cardinal River Coals	33(2)	fine coal wastes	33(11)	deleterious without toxicity, damage to stream, $2000
5	West Coast Reduction	33(2)	fats, oil, emulsion	33(7)	evidence gathering, toxicity injunction sought, $2000
6	Rayonier	33(2)	pulp mill works		abuse of process of the court, admission of elements of offence, $3000
7/11	Imperial Oil, B.C. Hydro	33(2)	oil spill	33(8)	due diligence established on appeal, municipal sewer, party to offence under Section 21 of Criminal Code, acquital
8	Standard Oil	33(2)	oil spill	33(8)	agent, scope of authority, Section 11, Interpretation Act, guilty
9	Capt. J. Tindale	33(2)	dispersants		toxicity of oil dispersant
10/12	Canada Tungsten	33(2)	oil spill	33(8)	period of time in which due diligence was exercised, strict liability
13	B.C. Forest Products	33(2)	dispersant	33(11)	toxicity testing, expert witnesses, evidence, meaning of deleterious substance, acquital

ISSUES INVOLVED IN UNREPORTED JUDGMENTS UNDER SECTION 33 OF THE FISHERIES ACT

	Defendant	Offence	Facts	Relevant Sections	Issues Argued
14.	Busat	33(3)	debris of bridge		meaning of debris
15.	MacMillan (#1) Bloedel	33(2)	pulp mill	33(1)	deleterious substance
16.	MacMillan (#2) Bloedel	33(3)	slash and logging		water frequented by fish, tirbutary

BRITISH COLUMBIA PROVINCIAL COURT

Shaw J.

Regina v. Reichold Chemicals (Canada) Limited

Environmental law -- Water pollution -- Chemical spill -- Deposit of a deleterious substance in water frequented by fish -- Failure by Crown to establish chemical characteristics of substance deposited -- Deleterious nature not proven -- Charge dismissed -- Fisheries Act, R.S.C. 1952, c. 119, s. 33(2).

The accused was charged that it did unlawfully and knowingly permit a chemical substance, namely water-soluble, hydroxylated aromatic compounds characteristics of phenol-like materials to pass from its plant and into a nearby creek that flowed into Burrard Inlet. The charge was laid after a fish kill occurred in the inlet near the point of entry of the creek.

Held, the charge was dismissed. The evidence failed to prove that the substance deposited was still deleterious upon reaching the fish-bearing waters of Burrard Inlet. Moreover, the results of analysis introduced by the Crown failed to establish the chemical characteristics of the substance deposited with the particularity necessary to show that it was deleterious.

November 13, 1969.

REGINA)
VS)
REICHHOLD CHEMICALS (CANADA) LIMITED)

REASONS FOR JUDGMENT
OF JUDGE OF THE
PROVINCIAL COURT OF
BRITISH COLUMBIA
James K. SHAW

HOLDEN at the City of Port Moody, British Columbia the 13th day of November, A.D. 1969.

REICHHOLD CHEMICALS (CANADA) LIMITED is charged that between May 15th 1969 and May 31st 1969, at or near the City of Port Moody, Province of British Columbia, it did unlawfully and knowingly permit a chemical substance, to wit - water soluable, hydroxylated aeromatic compounds characteristic of phenol-like materials, to pass from the Reichhold Chemicals (Canada) Limited plant, situate in the City of Port Moody, Province of British Columbia, into a creek, locally called Schoolhouse Creek that flows into Burrard Inlet, British Columbia, a water frequented by fish. This charge is laid under Section 33(2) of the Fisheries Act. Reichhold Chemicals (Canada) Limited says, through its counsel, that it is a good corporate citizen and that it is very conscious of any pollution problem it may create and that it would not knowingly permit any such situation to arise. In the light of the evidence of this case, this submission is just sanctimonious clap-trap in so far as the present situation is concerned. The evidence is that on May 16th 1969, officials of the Department of Fisheries told Mr. MacDonald, who apparently is an engineer at the Reichhold Chemical plant in Port Moody, that there had been a fish kill. He was shown the dead fish and samples and he said that he would look into the matter. Clearly nothing was done by the Company, for on May 28th 1969 the same situation prevailed at the leaking pump. All the evidence shown and available to Mr. MacDonald, and presumably his Company, would have indicated, at least on the surface, that there could well have been a connection between the leaking pump and the fish kill. It is pure nonsense for the Company to claim that it is a good corporate citizen in the face of this failure to rectify the situation. Significantly Mr. MacDonald was not called to give evidence and I can only infer from this that either he or his Company failed to give the situation the prompt attention it deserved.

The relevant portion of Section 33(2) of the Fisheries Act is as follows:- "No persons shall knowingly permit to pass chemical substances or any other deleterious substances or thing in any water frequented by fish or that flows into such water". I think the phrase "or any other deleterious substance" as used in the Section applies to the matters that preceded it, and in particular applies to chemical substances. In other words, the chemical substances which are alleged to have been passed into waters frequented by fish, those chemical substances must, in my view, be deleterious substances and not inert or non-deleterious substances. There is some ambiguity in the Information, for it alleges that Reichhold Chemicals (Canada) Limited permitted a chemical substance - and particulars of that substance are given - to pass from the plant into a creek locally called Schoolhouse Creek that flows into Burrard Inlet, British Columbia, a water frequented by fish. This last phrase, a water frequented by fish, is of concern to me. Does this phrase apply to the waters of Schoolhouse Creek or does it apply to the waters of Burrard Inlet? I think that any ambiguity there may be in the Information must be resolved in favour of the accused; and in my view, with that principle in mind, the waters frequented by fish are the waters of Burrard Inlet. In any event, there was no evidence to show that Schoolhouse Creek was a water frequented by fish, although there is considerable evidence to show that the Port Moody Arm of Burrard Inlet is a water frequented by fish. Has the Crown established beyond a reasonable doubt that the "water soluable, hydroxylated aeromatic compounds characteristic of phenol-like materials" was a deleterious substance at the time it reached the mouth of Schoolhouse Creek and entered the Port Moody Arm of Burrard Inlet? Clearly there were dead fish at the mouth and this creates a strong suspicion, when one follows the chain back to the leaking pump, that the substance leaking from that pump caused the fish kill. Of the samples taken on May 28th 1969, the sample taken in Schoolhouse Creek upstream of the Reichhold Plant, the sample taken from the tributary of Schoolhouse Creek, and the sample taken downstream of the Reichhold Plant at about the Railway Brigge, all those samples gave a reading of .34 parts per million. At the same time the highest reading in Schoolhouse Creek itself was 340 parts per million and this was about one foot below the upwelling. As the readings upstream and downstream from the plant were the same, I can only infer that the effluent from the plant did not contribute to the conditions already prevailing both upstream and a reasonable distance downstream and on to the mouth of the creek.

- The testing of the samples was done by Mr. Graham by way of a spectro-photometric system. This test disclosed the pure phenol, phenols and phenolic resins in solution in the samples. The test could not distinguish between pure phenol and phenolic resins, and it is clear from the evidence that certain phenolic compounds are far less toxic or deleterious than others. Unfortunately the distinction between the pure phenol and the phenolic resins cannot be distinguished by means of this test. This type of testing for the purpose of a criminal prosecution was unsatisfactory, and inconclusive in its results. To my mind the best test was that attempted by the Department of Fisheries, but which was scrubbed as distilled water was used. If I understand it correctly, this test placed fish in known quantities of phenolic solutions under controlled conditions from which clear results could be obtained. I think that this type of test should have been done again, for to my mind it was the only real way of showing whether or not the effluent from the property of Reichhold Chemicals (Canada) Limited, which when added to the natural phenols already in the creek and in the Port Moody Arm, was deleterious to fish by the time it reached the mouth of Schoolhouse Creek. By reason of the foregoing I have a very real doubt that the chemical which Reichhold Chemicals did in fact pass into Schoolhouse Creek, and which was then dissipated in Port Moody Arm, was deleterious, this doubt I must by law exercise in favour of the accused.

Accordingly the case is dismissed.

James K. SHAW
Judge of the Provincial Court
of British Columbia

Port Moody, British Columbia

BRITISH COLUMBIA PROVINCIAL COURT

Van Male J.

Regina v. Kamloops Pulp and Paper Company Limited

Environmental law -- Water pollution -- Deposit of deleterious substance in water frequented by fish -- Construction of logging road under direction of accused's subsidiary resulting in deposit of mud and silt into stream -- Material deposited deleterious -- Accused convicted -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(8), 33(11).

While building a logging road for a subsidiary company of the accused, an independent contractor deposited mud and silt into a ravine from which it was eroded and carried through a tributary into a creek where salmon spawned. The accused was charged with an offence under s. 33(2) of the Fisheries Act.

Held, the accused was found guilty. Fish were present in the creek at the material time and expert testimony proved the deleterious nature of the material deposited. Moreover, there was a sufficient relationship established between the accused and its subsidiary as to make the accused liable for the acts of the independent contractor.

P. Jensen, for the Crown.
A. Berna, for the accused.

June 17, 1971.

C A N A D A
PROVINCE OF BRITISH COLUMBIA
COUNTY OF YALE

IN THE MATTER OF
REGINA VS
KAMLOOPS PULP AND PAPER COMPANY LTD.

BEFORE HIS HONOUR) KAMLOOPS, BRITISH COLUMBIA
JUDGE S. VAN MALE) JUNE 17, 1971

ORAL JUDGMENT

Mr. P. Jensen	- appearing on behalf of the Crown.
Mr. A. Berna	- appearing on behalf of the Defendant.

THE COURT: This matter came on before me here in Kamloops on April the 7th and continued through April the 8th of this year.

The essential facts may be briefly stated. Some time in mid-October of 1970 Finn Creek, a tributary to the North Thompson River, was noted to be carrying an unduly large amount of mud and silt. The fact that the lower region of Finn Creek provides a spawning ground for both Chinook and Coho salmon was not disputed at trial.

An examination of the upper area of Finn Creek revealed a quantity of dirt or clay fill resulting from the construction of a logging road and as a result water entering or mixing with the fill slipped or ran into a tributary of Finn Creek. The dirt was carried by Finn Creek across the spawning grounds and finally deposited in the North Thompson River. The question before this Court is simply whether or not the defendant is guilty of an offence under the Fisheries Act, the amended Section Three One which reads as follows:

> "Subsection Two of Section Thirty-three of the (2) of the said Act is repealed and the following substituted therefor:
>
> > Number (2), Subject to Subsection (4) no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water."

And deleterious substance is defined in Section Eleven (A):

> "Number (1): Any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered deleterious to fish or to the use by man of fish that frequent that water or --"

It goes on to Section (2) which we are not concerned with.

The Crown introduced through counsel exhibits "one", "two" and "three", being a letter from the Registrar of Companies stating that the company was a good company in good standing at the time the incident took place in the fall of 1970 and a Certificate of Incorporation and a certificate that the company was presently in good standing. Written application by the Defendant was made to the District Forester on August the 27th of 1970 to cut a right of way and construct roads in accordance with a map on which the proposed road was shown. Exhibit number "five" came in as a letter from the District Forester dated September the 3rd, 1970 and stated in part:

"Road construction can continue at your own risk in accordance with construction specifications indicated in your aforementioned letter."

And that, of course, is the previously mentioned letter of application with map attached of August the 27th, 1970.

The evidence established that the defendant or more correctly K. P. Wood Products Ltd. proceeded to have the road constructed and I accept the evidence that the road was not located in accordance with the location as proposed by the defendant and accepted by the Forester.

The Fisheries Officer Aurell, who worked in the North Thompson area and particularly in the area of Finn Creek, some nine miles above Avola, had made several inspections of the Finn Creek spawning beds and had made fish counts prior to the incident in question. On October the 19th, 1970 he noticed mud and silt in or on the spawning beds and he travelled up the creek some ten miles where he still found a heavy concentration of mud and silt in the water. He had to turn back because of road conditions and the following day, October the 20th, he returned to the spawning grounds and sampled, dug in the spawning grounds where he found alevins alvines that were still alive. He then contacted one Mr. Jacob Volkers regarding the change of the location in the road and the mud and silt in the water. The following day Aurell and Volkers, in the company of a forestry representative, visited the site of the mud slide on the tributary to Finn Creek. Aurell took a series of pictures which came in as exhibits "eight" to "eighteen", showing the clay or mud fill and the progression of the material down the ravine to Finn Creek.

He gave evidence of the water being heavily silted and muddy and his evidence was that the water of Finn Creek was clear above the place where the tributary carrying the mud and silt entered.

The Crown introduced evidence as to the life cycle of salmon through the expert witness Boyd and the effect of transferred sediment on eggs and alvines in gravel spawning beds through one Cooper. Neither expert had visited the Finn Creek area either at the time of the incident or afterwards and their evidence was accepted on the general aspect as indeed, I suppose, it was expected to be. The Court accepted the evidence that transported silt or mud is detrimental to salmon eggs or alvine.

The Defendant called two experts. One Terrance Howard, a biologist with B. C. Research who gave evidence of going to Finn Creek some five months later and digging down through some eight feet of snow and obtaining a sample of the soil which purportedly found its way into Finn Creek. He gave further evidence which was not disputed as to settling speeds and oxygen content. And Mr. Herman, another Fisheries Biologist employed by Weyerhauser out of Washington accompanied Mr. Howard to the area of Finn Creek and gave evidence as to the state of the spawning grounds as he saw them then in March of 1971. And the evidence of these two experts was notseriously questioned and the Crown accepts their evidence as it accepts the evidence of the Crown expert witnesses on a very wide and general basis.

The defendant company asks this Court to consider the change of the location of the road as a change made in the best interests of the environment or at least, as an alternative route less likely to cause mud and silt to enter the waterways. This Court has not concerned itself particularly in, and does not concern itself with the change of location and accepts the evidence of the defendant that Amstutz and Kriese and, indeed, Spears Construction Limited followed normal road building procedures and they did not expect the soil to be washed or carried to the creek.

The fact remains, however, and this Court finds that the soil was transported to the North Thompson River and the spawning grounds on the lower Section of Finn Creek.

This Court finds further on the evidence of the experts that the deposit of mud or silt on the beds is detrimental to the eggs, to the alvine, or the embryo of fish which live in the gravel beds. The degree of damage cannot be established by the evidence before this Court, but I have no hesitation in finding that the substance deposited on the beds did have a damaging effect.

As to the definition of what is a deleterious substance I rely not on the cases which were cited, but on the plain reading of Section Eleven (A) (1).

As to the relationship of Kamloops Pulp and Paper and K.P. Wood Products I find that the Crown has established a relationship between the two companies that makes the defendant responsible

for the road and its construction. Indeed the original application accepted at their own risk was on Kamloops Pulp and Paper Limited stationery and was signed by Volkers who was employed and paid by Kamloops, K.P. Wood Products Company Ltd. and I find that on the total of the evidence that it is established that the defendant had knowledge and consented to the building of the road in spite of the fact that Spears Construction Company Ltd. was paid by K. P. Wood Products Limited.

On the total of the evidence before the Court I unhesitatingly accept the evidence of Aurell who was on the scene and who made notes and who took pictures and on this evidence, coupled with the opinions of the experts and I include all of the experts, the four of them, that silt is damaging to the life cycle of salmon and I find that the defendant is guilty as charged.

Mr. Berna raised an argument re the Martin case, but I am of the opinion that that has been resolved by an amendment to the Interpretation Act and I need not deal with it at this time.

We move on next to the area of the fine and I wonder if either counsel has a submission to make on a fine?

MR. BERNA: Before we get to the fine, Your Honour, did you direct your mind to possibly, possibly you did, to Thirty-three (8)?

THE COURT: Thirty-three (8) questions a prosecution under an offence under Section thirty-three, is that the section?

MR. BERNA: Yes.

THE COURT: I did direct my mind to it. It caused me some concern.

MR. BERNA: You do not wish to make any comments on it?

THE COURT: I think I have covered in what I have said about the relationship between the two companies and the construction company.

MR. JENSEN: Your Honour, the position of the Crown in regard to sentence of this matter is simply to refer you to the new amended Section Thirty-three, Subsection Five which provides that a violation of Section makes the accused liable to a fine not exceeding five thousand dollars for each offence. I would then refer you to subsection 6 which says that where an offence has been committed under Subsection 5 and it is committed on more than one day and it is continued for more than one day it shall be deemed to be a separate offence for each day that the offence is committed or continued. And I would submit that the evidence before you is clear that the offence was committed at the very least on the 19th, 20th and 21st days of October and I would therefore ask that you consider all of the circumstances of the case and that a substantial fine be levied for each of those dates.

MR. BERNA: Your Honour, on the evidence of Amstutz and the other Crown witness, the other person who worked with Amstutz it was very clear that this dirt was deposited in this gulley on only one day. Now, the effects of it may have, the signs may have resulted for a period beyond one day, but it was very clear that they only did this on one particular day and what I would suggest to you is that subsection six is committed on more than one day. It wasn't. The dirt was pushed into this heretofor dry gulley on one particular day. Now, "or is continued" and I would suggest to you that this means that there is no break, but there is a continuation over a period and this would be, for example, if effluent were being discharged and it were just continuous, if it were for Monday and it kept right on Tuesday and so on, but in this particular case the dirt was pushed in on one particular day and that was from the witnesses called by the Crown.

Secondly I would just add that I think it was reasonably clear that the people who were hired to do this work were not novices, were experienced logging road builders and the actual deposit of this dirt into that gulley was, of course, by these people and I am saying that the defendant took all reasonable precautions to do a good job.

I accept that, indeed, the defendant appears to have hired competent help and seemed to be co-operative with both the Forestry and the Fisheries over any problems that arose in the area and I think that should be taken into consideration. I might point out in reply to Mr. Jensen's suggestion that it continued for a number of days, there really is no, the information just charges two days and that is all that I am prepared to deal with here. In view of the fact that the defendant company did appear to co-operate and assist when they could, the Forestry and the Fisheries, and that they hired competent people, I am going to divide the fine in half and I am going to fine them a total of five thousand dollars.

It will be twenty-five hundred dollars for day one and twenty-five hundred dollars for day two.

(Court concluded.)

Certified:

BRITISH COLUMBIA PROVINCIAL COURT

D.M. MacDonald Prov. Ct. J.

Regina v. Weyerhaueser Limited

Information -- Sufficiency -- Word "knowingly" omitted from Information -- Mental element essential to the offence -- Information a nullity -- Charge dismissed -- Fisheries Act, R.S.C. 1970, c. F-14, s. 33(3).

The accused was charged that it "did unlawfully permit debris to be put into water frequented by fish" contrary to s. 33(3) of the Fisheries Act. The subsection in question allowed charges of putting debris into water frequented by fish or knowingly permitting debris to be put into such water.

Held, the information was a nullity and the charge was dismissed. The word "unlawfully" could not replace the word "knowingly" when such a deposit was charged, and therefore the omission of an essential element from the information made it invalid.

R. v. Rozonowski (1926),45 C.C.C. 193; *R. v. Brooks* (1950), 100 C.C.C. 164; *R. v. Solowoniuk* (1960), 129 C.C.C. 272; *R. v. Rese*, [1968] 1 C.C.C. 363; *Brodie and Barret v. The King*, 1936 S.C.R. 188; refd to.

P. Jensen, for the Crown.
A. Berna, for the accused.

March 13, 1972.

C A N A D A
PROVINCE OF BRITISH COLUMBIA
COUNTY OF YALE

IN THE MATTER OF
REGINA
VS.
WEYERHAEUSER LIMITED

BEFORE HIS HONOUR) KAMLOOPS, BRITISH COLUMBIA
JUDGE D. M. MACDONALD) MARCH 13, 1972

JUDGMENT

Mr. P. Jensen	- appearing on behalf of the Crown.
Mr. A. Berna	- appearing on behalf of the Accused.

THE COURT: May I see the information and the section of the Act as well.

MR. JENSEN: That is the information, Your Honour.

THE COURT: Thank you.

MR. JENSEN: And here is a consolidation of the act.

THE COURT: Thank you.

The accusedj Weyerhaouser Canada Limited, formerly known as Kamloops Pulp and Paper Limited and K.P. Wood Products Limited, have been charged that on or about the 20th of Septebmer, A. D. 1971, at or near Finn Creek in the County of Yale, Province of British Columbia did unlawfully permit debris to be put into water frequented by fish, contrary to subsection 3, Section 33 of the Fisheries Act as amended.

The charge has been laid under Section 33, Subsection (3) of the Fisheries Act which reads as follows:

> "No person engaging in logging, lumbering, land clearing or other operations shall put or knowingly permit to be put any slash, stumps or other debris into any water frequented by fish or that flows into such water or on the ice, over such water or at a place from which it is likely to be carried

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"into either such water."

It is clear from the wording of the Section that the Crown has two alternatives under which they may proceed. They may charge a person that they did put a debris into the water frequented by fish or they may charge a person that they did knowingly permit to be put debris into water frequented by fish.

In this regard I have referred myself to a decision of the British Columbia Supreme Court, Rex versus Rozonowski, reported in 45 Criminal Cases at page one nine seven.

In this particular case the accused was charged that he did unlawfully permit his premises to be used as a gambling house contrary to Section 228 (a) of the Criminal Code as it was at that time. Section 228 of the Criminal Code as it read at that time is as follows:

> "Anyone who has charge or has control of a premises knowingly permits such premises to be used for the purpose of a disorderly house is liable to summary conviction

"to a fine of two hundred dollars."

And Mr. Justice MacDonald ruled that one of the essentials necessary to convict a person under the above offence is that the person charged must have knowingly permitted such premises to be used for the purposes described.

He went on to say that in the conviction there was no mention of this essential element, that is to say, the word "knowingly". The conviction would not be objectionable if it were not for the fact that the word "knowingly" was used in the Statute and thus made an essential part of the offence.

The pertinent words in the Statute as dealt with by the Supreme Court Judge were, "knowingly permitted".

The pertinent words in the Statute with which I must refer myself are the words "knowingly permit". In the case that I have just cited the accused had been charged and convicted of unlawfully permitting these premises to be used in the way that was alleged. These words "unlawfully permitting", are very

similar to the words contained in the charge that is presently before this Court; that is to say the words "unlawfully permit".

In Regina versus Rozonowski the Court ruled that the conviction was defective and it quashed same.

It would follow that this Court is certainly bound by this decision unless there has been some change in the laws since the time that this particular decision was rendered. In that regard I have referred myself to some of the cases that have taken place since.

In Rex versus Brooks reported in one hundred c.c. at page one six two, a decision of the County Court in Ontario, the Judge held that where a Statute required the doing of an act knowingly as a condition of liability the Coruts have uniformly held that an information must allege the guilty knowledge and the omission of the word "knowingly" in the information or indictment is a fundamental defect.

In Regina versus Solowniuk, reported in Volume 129 of the Canadian

Criminal cases at Page 272, a decision of the British Columbia Court of Appeal, the accused was convicted of unlawfully obstructing a police officer in the execution of his duty. Section one hundred and ton (a) of the Criminal Code. The section under which the charge was laid in this particular case, reads as follows:

> "Everyone who resists or
> wilfully obstructs a
> police officer in the
> execution of his duties
> is guilty of an offence."

And in this particular case the Court held that the conviction would have to be quashed on the grounds that the information omitted or did not include an essential element of the charge, that is to say, it did not charge that the accused wilfully obstructed the police officer as required by the section, creating the offence.

It would seem that the higher Courts ruled that if a statute contains a section that some act be done knowingly or wilfully, the information laid under the section must also allege this, and where these words are omitted and the word "unlawfully" is used instead the information is defective and any conviction based thereon must be quashed.

Now, in this regard Crown Counsel has submitted a written argument to this Court and in his argument he has pointed out the decision of the Ontario Court of Appeal rendered by Mr. Justice Laskin.

Now, this decision is Regina versus Rese and it is reported in the Canadian Criminal Cases, 1968, Volume (1), page 364. In this particular case the accused was charged and I will not go into the full extent of the charge as it names numerous people , but he was charged that in the months of August and September in 1966 in Toronto he did unlawfully conspire, together with certain people, to commit indictible offences; namely, to wilfully interfere with the lawful enjoyment of private property of a certain person and also to unlawfully damage public property,

and it describes the wilful interference and the unlawful damage in the indictment.

This section under which the accused was charged, Section 372 (1) (a) of the Canadian Criminal Code reads as follows:

> "Everyone commits mischief who wilfully destroys or damages property--"

the word used in the section is "wilfully".

In one portion of the indictment the word "wilfully" was used, in the other portion of the indictment the second element thereof, the word "unlawfully damage" instead of "wilfully damage" was used. This particular Court held, and I quote from the Judgment on Page 365:

> "The statement in the information respecting private property uses the term 'wilfully' which is an essential ingredient of the substantive offences under Section 372. The term is not used in particularizing the conspiratorial object in relation to public property; instead the word 'unlawfully' is used. The question thus is whether this is a sufficient allegation of a criminal conspiracy. (It was not disputed that had the conspiracy alleged an agreement to violate Section 372 (3) and (4), a defect in the subsequent particularization of these offences would not have rendered the information open to successful attack.)
>
> "The question is important

> "because, in my opinion, there is insufficient evidence to implicate the accused Rese in the conspiracy alleged as to private property, but there is abundant evidence to associate him with a conspiracy respecting public property if such an offence is properly charged."

He does go on to say:

> "The Crown does not contend that 'unlawfully' and 'wilfully' have necessarily a common meaning, and I need not cite cases to show that they do not. What is said is that the allegation of conspiracy -- the agreement being admittedly the gist of the offence-- imports wilfulness in the specification of the offence in relation to public property."

He went on further and in the last paragraph on page 366 he states:

> "Having regard to the charge of conspiracy, I am loath to countenance a lesser standard for charging such an offence than would be required if the object was charged as a substantive offence."

In those words this judge seems to indicate that had the substantive offence been charged, in this particular case that is to say had this person been charged with damaging a public property, then he seems to conclude that the word "wilfully" would have been required in the charge. He states it quite clearly in this particular sentence and then he seems to go on and say however, because these people here have been charged with conspiracy to commit an offence, that the picture has changed and the same standard does not apply.

And I think essentially because of this, this Court has no alternative but to distinguish this decision. He goes on further and he said:

> "In this connection I must advert to the extended meaning of 'wilfully' prescribed by Section 371 (1) of the Criminal Code in these words:
>
> > '371 (1) Everyone who causes the occurrence of an event by doing an act or by omitting to do an act that it is his duty to do, knowing that the act or omission will probably cause the occurrence of the event and being reckless whether the event occurs or not, shall be deemed, for the purposes of this part wilfully to have caused the occurrence of the event.'"

Here again there is an additional factor here that the Court relied upon in coming to the conclusion that the word "unlawfully" would suffice, but this is not the situation that I have

before me here today. The leading case on this question of what must be contained in a charge is the decision Brodie and Barret versus the King which is reported in 1936 Supreme Court Reports page 188. This is the decision of the Supreme Court of Canada. This decision was followed by our British Columbia Court of Appeal on two occasions and this decision seems to say that the charge or the statement must contain all the allegations of matter essential to be proved and must be in words sufficient to give the accused notice of the offence with which he is charged.

This is the Supreme Court of Canada and it is followed in the decisions that I stated that I quoted. Nobody can question the fact that the word "knowingly" is an essential portion of this charge. It was left out and the word "unlawfully" was placed in it's stead. The result of this is that these procedings have been a nullity right from the beginning. There has been no

charge before this Court and because of that I am not able to deal today with the merits of this case.

I have no alternative but to dismiss the charge and I do so.

(Court adjourned.)

I hereby [illegible] to
be a true and [illegible] record of these
proceedings

WILFRED [illegible] KLINGSAT
OFFICIAL COURT REPORTER

ALBERTA PROVINCIAL COURT

Rolf Prov. Ct. J.

Regina v. Cardinal River Coals Ltd.

Environmental law -- Water pollution -- Deposit of deleterious substance in water frequented by fish -- Fish and other organisms adversely affected by coal fines -- Water in question still frequented by fish despite impact of industrial activity -- Accused convicted -- Fisheries Act, R.S.C. 1952, c. 119, ss. 33(2), 33(11).

Effluent from the accused's coal processing facilities containing high concentrations of suspended coal fines was deposited in a nearby creek and the company was charged with an offence against s. 33(2) of the Fisheries Act.

Held, the company was found guilty. Expert testimony had shown that the adverse effects on the fish and other organisms in the creek were sufficient to identify the material in question as a deleterious substance. Even though industrial activity had rendered the creek marginal habitat, it was still a fishery within the meaning of the statute, as fish, given an opportunity, would frequent the creek in significant numbers.

B.D. Patterson, for the Crown.
M.D. MacDonald, for the accused.

March 20, 1972.

IN PROVINCIAL JUDGES' COURT
JUDICIAL DISTRICT OF EDMONTON

REGINA

VS

CARDINAL RIVER COALS LTD.

JUDGMENT

Edmonton, Alberta
March 20, 1972.

PROCEEDINGS held in Provincial Judges' Court, Municipal Courts Building, Edmonton, Alberta, on the 20th day of March, A.D. 1972, before Provincial Judge

C. H. ROLF, Q.C.,

B.D. PATTERSON, Esq.,.....Appearing for the Crown,
M.D. MACDONALD, Esq.,.....Appearing for the Defence,
C.G. McCrae..............Student Court Reporter.

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1 THE COURT: Gentlemen, this matter is for decision this afternoon respecting Cardinal River, docket #3039, right? It relates to the Luscar Creek and the Cardinal River operation of that period. Are you ready, gentlemen?

2 MR. MACDONALD: Ready, sir.

3 MR. PATTERSON: Ready for the decision, sir.

4 THE COURT: With respect to this charge, gentlemen, I am required to ascertain whether the manner in which Cardinal River Coals Limited operated their Luscar Creek strip mining operation was, in fact, deleterious in itself, or part of a continuing process which produced a deleterious effect upon Luscar Creek as of the 18th of June, 1971.

The charge was laid under the provisions of the Fisheries Act being chapter 119 of the Revised Statutes of Canada, 1952, and amendments

THE COURT: (cont) thereto.

The evidence was adduced by experts and other witnesses for the Crown as to whether "effluent" in the form of coal fines suspended in water was deleterious. The source of the coal fines was in the Luscar Creek storage and loading silo (which is later referred to as the coal silo), as the washings from the coal dust accumulation beneath the said coal silo.

This washing procedure was introduced by the company to prevent explosion and fires from reoccurring. I degress for a moment to indicate that apparently they have had this difficulty earlier and this was the precautions introduced so that it wouldn't happen again. Needless to say, it was a most reasonable precaution and a most important procedure. This "effluent" unfortunately found its way into Luscar Creek. Much evidence was adduced by the Crown as to the effect on the creek environment, particularly as it affected the stream bottom, the habitat of the benthic vertebrates, and generally the bottom fauna which sustains fish spawning, hatching of eggs, growth of the fry, and the well-being and survival of the adult fish.

By virtue of this fairly regular

THE COURT: (cont) injection of effluent from the coal silo, it was also pointed out in evidence that such injections would totally obscure the bottom of Luscar Creek for approximately four and one half miles downstream from the point of input.

It was generally agreed that suspended solids in water have an adverse effect on the stream in the following manner: 1) effect on the fish food, that is, bottom fauna, in that siltation on a long term basis would change or eliminate it, thus effectively eliminating the fish. 2) on the fish food itself in that by the restriction of the sunlight, the process of photosynthesis is slowed down or stopped, thus restricting the production of the food sustaining the fish population. There is no doubt that the expert witnesses for both the Crown and the defendant company, minimizes this, albeit to different degrees, the basic degree of difference being that the expert witness Griffing for the company bases his conclusion on the basic premise that Luscar Creek is no longer a typical mountain stream, but is a marginal creek at best.

3) Spawning is affected and it is to be noted that we are concerned mainly with the rainbow trout, although eastern brook trout are also present. Rocky riffles are the spawning areas

THE COURT: (cont) for these fish, because both horizontal and vertical flow of water over the eggs is essential to provide sufficient oxygen for them to successfully hatch. On this there appears to be no basic disagreement. Witnesses are also agreed that June and July are the critical months for spawning by rainbow trout whereas eastern brook trout spawn in the fall.

4) The fourth area of concern is that the hatching eggs are sticky and siltation would stick to them after they have been laid, therefore suffocating them and preventing their hatching, or at best, limiting their hatching. 5) high turbidity in the water would choke the adult fish or more likely drive them away to try and relocate in another portion of the stream, temporarily or permanently. As pointed out, there appears to be no disagreement as to these basic principles, but only as they apply to this particular stream.

The witness Paul Pactkau explained the short term effect of the effluent being injected into the stream. His conclusion is that the injection of the effluent at this time of year, and we are talking about the 18th of June 1971, because it is the spawning season, (I think he used the term critical period), is deleterious not only because of the siltation, but

THE COURT: (cont) primarily because of the scouring action on the stones of the stream by the effluent in the water. It will upset the balance of the fish environment to the detriment of the fish on a short term basis. The long term effects is serious because the natural recovery of the stream is prevented. The fish numbers become reduced or become non-existent in the stream.

Tests show there are only four year old trout in very limited numbers in the section of Luscar Creek where the effluent from the coal silo was injected into the stream, for a distance of approximately four and one half miles downstream, (my distance of four and a half miles is fairly rough). It is interesting to note that Cardinal River Coals Limited has been operating this strip mining operation on Luscar Creek since 1969. Section 33 subsection 11 of the Fisheries Act states as follows: (i) A "deleterious substance" means any substance that, if added to the water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered deleterious to fish or to the use by man of fish that frequent that water, or (ii) any water that contains a substance in such quantity or concentration, or that has been

THE COURT: (cont) so treated, processed or changed, by heat or other means, etc. and we are basically not concerned with that portion of the Section 33, subsection 11, paragraph 1 is the primary governing section.

In this instance I find as a fact that the water used to flush out the coal silo had suspended therein coal fines and is therefore a deleterious substance as previously noted. It was in sufficient quantities and volume to make Luscar Creek completely black so as to obscure the stream bottom from view for a significant distance downstream, and that it was injected into the stream on the regular occasions of washing out the coal silo. I find it a fact that the coal fines suspended and the effluent thus produced and which found its way into the creek, to be the deleterious within the contemplation of Section 33, subsection 11 of the Fisheries Act, because of siltation but more importantly because of the scouring process of the effluent. In this respect, I accept the description and the conclusions of the witness Paul Paetkan.

The next question is whether or not Luscar Creek is "a stream frequented by fish" as set out in the Fisheries Act above noted. From

THE COURT: (cont) and one half miles of Luscar Creek which was the subject of a good deal of evidence before this Court, is indeed marginal as described by the witness Griffing. This is due to the manmade changes to Luscar Creek resulting from the many workings starting back as far as 1912. The statute doesn't define the degree of degradation or numbers of fish required to make it a fishery. These therefore become a question of fact. I find it a fact that the said Luscar Creek is a fishery under the statute and that fish, given an opportunity, would frequent the stream in significant numbers.

I further find that the injection of the effluent was part of the continuing process causing degradation of the stream. In this I am supported by the company's own actions in providing additional and, it is hoped, adequate facilities, such as increasing the capacities of the settling ponds, drilling into the old workings to get rid of the effluent resulting from the preparation of coal for shipment, and produced by washing out the coal dust from beneath the coal silo. I commend the company for their efforts in this and I trust the appropriate communication is maintained with the Department of the Environment in this matter.

This conduct of the company confirms

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The next question is whether or not Luscar Creek is "a stream frequented by fish" as set out in the Fisheries Act above noted. From the evidence adduced I am satisfied that the six

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THE COURT: (cont.) my findings of fact that as reasonable persons considering the measures they introduced prevent fire on the inside of the workings, it should have taken similar reasonable steps to prevent the effluent from the coal silo finding its way into Luscar Creek. They did not do this until after the event of this charge. Up to this point their attitude to the pollution of the stream was such that it amounted to complete indifference.

Having made these findings of fact I can come to no other conclusion, gentlemen, but that the company is guilty as charged, and I so find.

This leaves me with the most difficult of problems, namely, the penalty to be imposed. As stated several times throughout the course of the trial, man's requirements in the name of the public good must be measured against the inevitable destruction or upset of the balance of his environment. Man too is part of the ecology and I have made that statement several times throughout the trial because it appears to me the extreme right wing of ecology, if that is the correct way of stating it, seems to forget we too are part of the environment, and that the environment is also to be enjoyed by man. Unfortunately he is the most destructive force in nature. It is this destructive force

THE COURT: (cont) that must be curbed, but not to the exclusion of his needs or to the well-being of the greater community. When you look to other major corporations such as the Hinton pulp mill and its relation to the Athabasca River, Calgary Power and the evident trouble with Lake Wabamun, the City of Edmonton, in that it has piled salt and chloride laden snow on the ice of the North Saskatchewan River, to cite only a few cases, and what they have been allowed to do to our environment all in the name of the good of society as a whole, then the severe penalty set out in the Fisheries Act is most severe particularly when there appears to be such a grave disparity as to who in fact is prosecuted.

Having come to these conclusions and having unburdened myself with respect to some of my private views, I therefore impose a fine of $2,000 and in default of payment enforcement. I refuse to make any order with respect to any of Cardinal River Coals Limited Luscar Works, for the company in this particular instance has shown an awareness of the problem, and a most commendable willingness to keep pollution to a minimum, while at the same time maintaining its production quotas and continuing as an integral part of the province's contribution to the gross national product. Are there any questions, THE COURT: (cont) gentlemen?

5 MR. MACDONALD: No questions.

6 MR. PATTERSON: No questions at this time, sir.

7 THE COURT: What about the other case, gentlemen?

8 MR. PATTERSON: Sir, the plea has been recorded. The case was set for today for setting of a date. My learned friend indicated to me some views he might have on it. He might express them to you, sir.

9 THE COURT: Mr. MacDonald?

10 MR. MACDONALD: I would like three weeks to a month to consider my position on the other trial, sir. I have the reporting to do and I would like that consideration of time. I do not think that is unreasonable.

11 THE COURT: Remanded to 9:30 a.m., 17th of April for fixation or the 24th of April.

12 MR. MACDONALD: 17th of April is fine, sir.

13 MR. PATTERSON: I would like to keep this in mind, sir.

14 MR. MACDONALD: I am sorry to interject, I have a possible date in Calgary before the Court of Appeal so perhaps the 24th would be the more convenient time.

15 THE COURT: I have no objection to the 24th under the circumstances. As I have indicated I am of

THE COURT: (cont) the view this company has taken commendable steps to prevent a further and continuation of the problem we have listened to.

16 MR. PATTERSON: The only thing is that these things have gone on for many months. We would like to see something else, perhaps the Court has been very co-operative to date in arranging time for us. My only further suggestion would be that perhaps we could both consult with you as to when Mr. MacDonald's decisions and instructions are confirmed as to arranging a satisfactory date. I realize time is not that available to the Court.

17 THE COURT: How about the 24th of April, gentlemen. If you come to any conclusions, made any decisions, receive any further instructions from your clients, Mr. MacDonald, then perhaps you can get together and always attend upon me in my chambers.

18 MR. PATTERSON: I wish to thank the Court for the indulgence shown to both the Crown and myself in this matter.

19 THE COURT: I found it most interesting. Do you require time to pay?

20 MR. MACDONALD: 30 days.

21 THE COURT: Time to pay, 24th of April.

BRITISH COLUMBIA PROVINCIAL COURT

Selbie Prov. Ct. J.

Regina v. West Coast Reduction Ltd.

Environmental law -- Water pollution -- Deposit of fats and oils in water frequented by fish -- Chemical analysis and determination of lethality proving harmful nature of substances -- Accused convicted -- Fisheries Act, R.S.C. 1970, c. F-14, s. 33(2).

The accused was charged with unlawfully depositing a deleterious substance in water frequented by fish after a malfunction in its plant caused the release of a large quantity of fats, oils and emulsions thereof into a nearby harbour.

Held, the accused was convicted. That the company had deposited the material in question was shown by the admissions of its employees and their attempts to clean it up. Although tests conducted by government officials on the spilled substances were open to technical criticism, nonetheless they showed that the substances in question were lethal to fish and were capable of depleting the oxygen from the water into which they were put. Even though fish could possibly avoid the area, the evidence showed beyond a reasonable doubt that the waters in question were frequented by fish and therefore the Crown had discharged its burden.

Environmental law -- Water pollution -- Sentence -- Deposit of deleterious substance in water frequented by fish -- Two thousand dollar fine -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(5).

Where the accused has failed to take adequate measures to remedy a defect which caused both an earlier spill and the one which constituted the present offence, nonetheless the objectives of deterrence and protection of the public interest may be met by a fine of two thousand dollars, as the incident in question was not of the most serious type.

Environmental law -- Water pollution -- Order to refrain forcing plant to cease operations -- No order issued -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(7).

Upon conviction of an accused under s. 33(2) the Court may not make an order pursuant to s. 33(7) which compels the corporation convicted to take positive steps to remedy the defect which cause the offence, nor does the latter provision allow an order compelling the company to cease operations.

D. Berger, for the Crown.
J.C. Bouck, for the accused.

May 1, 1973.

CANADA)
PROVINCE OF BRITISH COLUMBIA)
COUNTY OF VANCOUVER)
CITY OF VANCOUVER)

REGINA

VS.

WEST COAST REDUCTION LTD.

BEFORE: W. S. SELBIE, PROVINCIAL JUDGE

VANCOUVER, B.C.
MAY 1, 1973

APPEARANCES

D. BERGER, ESQ.	APPEARING FOR THE PROSECUTION
J. C. BOUCK, ESQ.	APPEARING FOR THE DEFENCE
M. E. BELLAMORE	COURT RECORDER/TRANSCRIBER

REASONS FOR JUDGMENT AND SENTENCE

MR. BERGER: Good morning, Your Honour.

THE COURT: Yes, Mr. Prosecutor.

MR. BERGER: Calling number one, Your Honour, Regina vs. West Coast Reduction Limited.

THE COURT: The defendant company is charged on or about the 22nd of September, 1972 did unlawfully deposit a deleterious substance, to wit, oils and greases in water frequented by fish, namely, the waters of Burrard Inlet, County of Vancouver, Province of British Columbia. There's no problem, of course, with Jurisdiction in this matter. The fact is I find from the evidence there is as follows. Some time around noon on September the 22nd of 1972, through a malfunctioning of the reduction system of the plant in question a large quantity of fats and oils and emulsion were deposited through the plant's sewage system into an area of Burrard Inlet. Mr. Prosecutor, if you can control some of this please I'll wait for them. This was the second such occurrence during that year. I reject the possibility on the evidence that this substance may have come from other unidentified and unknown linkages to the sewer. On the evidence I find it came from the accused's plant and it appeared to have been observed first by an employee of that company because when the National Harbours Board boat, skippered by Captain Coughlan, came on the scene there was a person at that time from the plant throwing some substance onto the soill. This boat stood by to await the National Harbour's Board Police who arrived in the person of Corporal Forrest, who was shortly joined by the Harbour Master, Captain Holland. And they spoke to Mr. Diamond of the defendant company who, in effect, apologized for the spill and offered to clean it up. He also admitted a prior spill in July of 1972 of a similar nature, and indicated to the Harbour Master and the Constable it's cause. That is, the malfunctioning of the plant itself. In the interim two men of the complainant company -- defendant company began an attempt to corral the spill using an oil boom from a small sciff. And while doing so Mr. Carscadden, the Fisheries Officer, arrived and observed the spill which was on the surface and under the surface to a fair degree according to him. Now, about the same time Mssrs. Trasolini and Siddhu (?), I think that's the name, and Watkins arrived from the Environmental Protection Service and conducted an investigation. The Officials were taken on a tour of the plant by one of its employees and were explained -- where it was explained how the accident had occurred. And I'll now refer to the evidence of Mr. Trasolini of the Environmental Protection Service. He made visual observations of the spill and also took samples. His procedure on the evidence was as follows. Prior to coming to the scene he equipped himself with two thirty-two ounce jars and one plastic container. Bottles were washed and provided in the Lab for purposes such as he was using them for. He didn't wash them himself. Plastic containers are steamed clean prior to being assigned and he didn't do that either. But this is apparently the procedure adopted by the Service and as an employee of that Service I see no reason to doubt his knowledge of its internal workings, at least, to that extent. He was also equipped with a new plastic bucket. Prior to taking the samples in the bucket and then into the jars and container he added no contaminants or preservatives to assist or detract from the condition of the sample. He didn't use and wasn't aware of any different standard sampling techniques than what he was using. He merely filled the bucket from the spill and then filled the containers. He kept the samples overnight and the next day delivered the bottles to Mrs. Pummell for analysis and the plastic container to Mr. Watts for testing. Mrs. Pummell gave evidence regarding her analysis of the spill and, in effect, her test was to measure the amount of oxygen that would be consumed by the breakdown of the product in the water. She performed her tests according to herknowledge and in cross examination it was obvious that she wasn't aware of other studies and recommended testing techniques. The effect of this on the evidence, of course, is problematical. There is no suggestion that her methods were improper. At worst it would, perhaps, not be as exact as could be. There isno suggestion either, aside from a mathematical error in her calculations, that her results were wrong when conducte according to her training. Only the text writers may be critical of her procedure. In sum I'm not satisfied on the cross examination conducted from this book that her findings should be ignored, at worst they would, perhaps, be entitled to little weight. The C.O.D., according to her, was very high thus reducing oxygen available to marine life which I think one could assume would act in a deleterious way on sea life, that is, on fish. Mr. Watts was called to give his findings from the contents of the plastic container. His object was to find the test concentrations which live fish could survive in. It consisted of various concentrations with water added of the spill and one control sample where no spill was added, to which fish were exposed and a brief conclusion from these tests would be that on the basis of the tests the spill was not only deleterious but definitely fatal when it was present in the water. The test was objected to in cross examination on a number of grounds. Firstly, fresh water was used rather than ocean water. Secondly, the type of fish was not contiguous to the water at that time in the Inlet. Thirdly, because of oxygenation manually applied the spill was kept in suspension instead of rising to the top and staying there as was the situation on the water. Fourthly, temperature was not adequately regulated. Fifthly, no control sample from actual waters of the Inlet was used. And, sixthly, the weight factor and number of fish per tank were not adequately regulated, at least, according to a text book referred to by the Defence. There may be more objections to his evidence but those are the main ones. Now, while all of this may be true and may act as a pall on the testing methods used by the Department one fact seems to me comes out. Whatever the water, the concentration of fish, the temperature, etc. all these fish exposed to the spill died. And under similar conditions those not exposed did not die. Therefore, is it safe to say in the circumstances that the spill contributed to their death and with the greatest of respect how can I come to any other conclusion but that so long as that spill is in the water it oxygenated to such an extent that it suffocates the natural sea life. This is a layman's conclusion based on the totality of the opinions of these two experts. Their evidence coupled with the visual evidence of the parties who gave it in Court may not be of the absolute technical best but its weightiness draws me, inevitably, to that conclusion anyway. Now, from further evidence of divers of the National Harbours Boardand members of the Fisherie Department who gave evidence on the marine life in the vicinity of the outlet I'm satisfied the Crown has proved that these waters were frequented by fish. The fact that a fish may avoid the contaminated area is not the point. The area hereinvolved and charged was part of the tidal area known as Burrard Inlet and that is an area frequented by fish as set out in the Act. The purpose of this legislation, of course, is obviously to avoid the contamination of any part of these waterways of which Burrard Inlet is one. From all the evidence I'm satisfied the Defendant Company has committed the offence alleged and I find it guilty. I'll hear you, Mr. Bouck, on sentence.

BOUCK: Thank you, Your Honour. Now first of all, Your Honour, ...

(COUNSEL SPEAKS TO SENTENCE)

COURT: Well Counsel have certainly given me lots of leeway from minimum fine to the maximum. There aren't that many cases of this nature that have been before the Courts. There is the two that have just been referred to and right off hand I can't think of any others. In considering penalties on this type of offence I have to consider the public's growing concern with the protection of the environment. I think I've got to also make a fine that will reflect the need to impress on persons or companies that positive steps must be taken to remedy these defects. And that if positive steps are not taken then it will be to their detriment. I don't know if I'm putting it properly but perhaps I'm saying that I don't feel that a find should be nothing more nor less than a licence so that it would be easier to accept the fine then to have the matter fixed. The fine, therefore, must reflect, as I say, the need to impress upon the company that, if for no other reason than their own books, it is better to fix the matter than to leave it go. Because that's what happened here. These people had a similar spill on July the 12th according to the person who is the owner or general manager who has given evidence, or, whose statement is in here. Nothing -- if something was done or if tests were made, nothing was done until December when an exactly similar tyoe of spill occurred. Now the fact that it's going to cost a lot or nobody can find a better method of doing it can't effect this that much. If you can't run a plant like that without depositing this stuff in the Inlet well I'm afraid that you'llhave to -- the plant must be relocated to some place where, if there is a spill, it will not be deleterious in the manner in which this one was. The maximum fine is five thousand dollars. I must reflect the seriousness that this matter is looked upon by the Legislature. On the other hand I can't see that this is the most serious tyoe. One of the cases referred to by Counsel for the Prosecution was a heavy and a large gasoline spill. I think that, perhaps, would be a little more serious than the situation that came here. In any event, there will be a fine on all the circumstances of two thousand dollars in default of payment distress.

BERGER: The Crown is also asking for an order under Section 33(7) that the Company refrain from depositing any deleterious substance ...

(ARGUMENT BY COUNSEL)

COURT: This Section is permissive, it's in two parts. It says:

> "Where a person is convicted of an offence under this section, the court may, in addition to any punishment it may impose, order that person to refrain from committing any further such offence"

Now in my mind that must presuppose an intention, a willful intention, on the part of the person convicted. I cannot see how I can order someone not to allow an accident to happen. "Order that person to refrain from committing any further such offence". This was an accident, that's accepted by all parties. I don't think that that particular portion of that section is applicable. It goes on to say:

> "to cease to carry on any activity specified in the order the carrying on of which, in the opinion of the court, will or is likely to result in the committing of any further such offence."

It seems to me the only way I could do that would be to order the company to shut down. I can't order them to fix what is there because the Act does not empower me. The only thing I could do is tell them to cease operations and I do not consider that any section in any Act was meant to go that far. I'm going to exercise my discretion and make no order unto this. If this continues, if there are further accidents, further Court actions may be taken and further fines up to and including five thousand dollars may follow. But I must keep into mind this is a first conviction of this type of offence. The fine will stand there will be noorder on that subsection. Do you need time on this Mr. Bouck?

BOUCK: Yes, Your Honour, I'd like two weeks.

COURT: Two weeks to pay.

COURT: Until the 15th of May.

BOUCK: Thank you, Your Honour.

BERGER: Your Honour, there are two remaining Counts on the Information, Count one and Count three. I'd ask that be put over ...

(PROCEEDINGS CONCLUDED RE COUNT TWO)

W. S. SELBIE,
Judge of the Provincial Court
of British Columbia

I hereby certify the foregoing to be a true and accurate report of the evidence and proceedings herein.

M. Elaine Bellamore
A duly sworn Court Recorder
5/8/73 (MEB) ..

BRITISH COLUMBIA PROVINCIAL COURT

Bowen-Colthurst Prov. Ct. J.

Regina v. Rayonier Canada Limited

Courts -- Abuse of process -- Federal authorities contributing to development of provincial standards for accused's mill -- Mill still in violation of federal statute even if meeting provincial requirements -- No abuse of process in bringing charges under federal legislation -- Fisheries Act, R.S.C. 1970, c. F-14, s. 33(2).

The accused applied to have two charges brought against it under s. 33(2) of the Fisheries Act dismissed on the grounds that they were an abuse of process of the court.

Held, there was no abuse of process and the trial would proceed. Participation by federal officials in the formulation of pollution standards for inclusion in a provincial licence granted to the accused did not preclude the federal Crown from laying charges under the subsection in question even if compliance with the provincial instrument would still have resulted in violation of the federal enactment. Nor could it be said that the federal Crown had consented to the offences even though the federal minister responsible for fisheries allegedly assured a provincial minister that proceedings against the accused would not be instituted if the provincial requirements were met. Finally, the defence failed to show that the proceedings were founded upon oblique motives.

Held, the accused was found guilty on two charges of depositing a deleterious substance in water frequented by fish.

Environmental law -- Water pollution -- Sentence -- Deposit of pulp mill effluent in water frequented by fish -- Depletion of oxygen by effluent causing fish kills -- Fine of fifteen hundred dollars per count -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(5).

Where the federal authorities are aware for some time before bringing charges under the Fisheries Act that an infraction of s. 33(2) is occuring, and where they participate in setting requirements for the operation in question which would not ensure adherence to the Act, and the offences charged are the first of this kind brought against the accused, the appropriate penalty is a fine of fifteen hundred dollars on each count charged.

D.R. Kier, for the Crown.
E.C. Chiasson, for the accused.

March 6, 1974.

all here till at least 6:30 and if the additional time would be of use to Your Honour.

THE COURT:

Thank you very much. We will adjourn then until 3:30.

COURT ADJOURNED TILL 3:30 p.m.

As council may have anticipated by reason of the fact that I took a little longer than I said I was going to I have arrived at a decision in this matter. I can see no justification having arrived at a decision for reserving. I can see not justification having arrived at a decision for reserving the matter. The only reason for reserving would be that I would reduce my reasons to writing. This no doubt would be more articulate than giving my reasons as I am about to do orally. When I say orally I do have some notes but I will not be filing any written reasons. At the outset I would like to express my appreciation to council for the assistance that I have received in this case. Assistance that was as a result of careful preparation on behalf of both council which has certainly lightened the burden of my duties in this matter. I will of course not only be giving my decision in this matter but I will be giving my reasons for my decision. In the course of those reasons, and I say this more for the benefit of the members of the public and people that are connected with the defendant company. In giving these reasons I will not be referring to all the evidence that we heard in the past day and a half nor will I be referring to all the submissions that were made to me by council but I want it clearly understood that in arriving at my decision I have given careful consideration to all the evidence that I have

heard, to the Exhibits that have been filed and I listened attentatively to submissions of council and I am satisfied that I followed the submissions carefully and they have been carefully considered before I arrived at any decision. The defendant company faces two charges under section 33 - 2 of the Fisheries Act. An Act of the Parliament of Canada. Prior to any plea being taken from the defendant, Mr. Chiasson made an application to quash or stay the proceedings on the grounds that the prosecution constitutes an abuse of the process of this court. Mr. Chiasson applied to lead evidence in support of his application. The Crown, as I recall, objected to evidence being led at that stage of the proceedings. In any event I ruled that the trial would proceed and that the defendant could introduce evidence during the trial and renew the application at a later time. The defendant declined to enter any plea quite properly feeling that it might prejudice the position taken initially that this was an abuse of the process of the Court and by pleading it would be admitting that there was such jurisdiction. As a result I entered a plea of not guilty on behalf of the defendant. The Crown called their witnesses but relied on certain admissions made on behalf of the defendant. Under the circumstances that have developed I can understand the defendant wishing the application to be dealt with first. Council no doubt considered that the admissions which he was aware were going to be made were completely irrelevent to his application to have a stay on the grounds of abuse. He may further have felt that such admissions would not only be irrelevent but there was a possibility that they might be prejudicial to the application. I have gone into this

CANADA
PROVINCE OF BRITISH COLUMBIA
COUNTY OF NANAIMO
DISTRICT OF PORT HARDY

Port Hardy, B.C.
March 5 & 6, 1974

SUMMATIONS AND JUDGES DECISION IN THE CASE OF REGINA VS. RAYONIER

Proceedings before Judge T.G. Bowen-Colthurst

SUMMATIONS AND JUDGE's DECISION IN FISHERIES VS. RAYONIER CASE HELD IN PORT HARDY, B.C. ON MARCH 5 AND MARCH 6, 1974.

MR. CHIASSON:

Your Honour, I left with you yesterday exerpts from various authorities and I don't propose to review those again today though the argument that was made yesterday was made in advance of plea and I will incorporate it if I may now in terms of the legal foundation for the position that I am taking. Essentially that is that you should decline jurisdiction in this case at this point on the grounds that these proceedings are in abuse of the process of this court. That is my first position.

My second position is that there should be an acquittal because as a matter of defence. The factual issues that I argue about the abuse of process constitute a defence either because the proceedings are an abuse of process or because the federal Crown has effectively consented to the circumstances which gave rise to the charge under the Fisheries Act.

THE COURT:

Do you mind if I interrupt you as you go along? That will help clarify my thinking. You say that these proceedings if they continue would constitute an abuse of the process of this court therefore I should decline jurisdiction or possibly as Mr. Justice Munroe has said stay it. Do you say alternatively I should acquit on the grounds of abuse of process or that the evidence is such that it raises a defence to the question of innocence or quilt?

MR. CHIASSON:

Yes.

in some detail because I have concluded that it is my view that the admissions are irrelevent to that application and I want to assure council that I have completely disabused my mind of those admissions and of the subsequent evidence that did not relate to the application. I have had many years at the Bar prior to my appointment and I am fully able to disabuse my mind completely and not take these matters into consideration when arriving at such a decision. The defendant called evidence to support, after these admissions were made, the submission that the proceedings were an abuse of the process of this court. The defendant not only introduced oral evidence but there were certain letters and certain maps that were introduced by consent and marked as Exhibits. The Crown then called rebuttal evidence after the defence had finished. The defendant then renewed its submission that the proceedings should be quashed or stayed on the grounds that they were an abuse of the process of this court and Mr. Chiasson argued that in the alternative the defendant was entitled to an acquittal. The first matter which I considered was as to whether I have jurisdiction to prevent an abuse of the process of this court and Mr. Chiasson referred me to the case that is in the Canadian Criminal Cases entitled Regina vs. K which is a 1971 decision of our Supreme Court of British Columbia citation being 5 C.C.C. (2nd) 46 the decision was a decision of Mr. Justice Munroe and in that decision he referred to the Osborne case which was mentioned by Mr. Kier in his argument and Mr. Justice Munroe concluded in that case that such jurisdiction does exist. Towards the end of his judgement he says "proceedings upon the second information

should be stayed on the ground that they are so oppressive as to constitute an abuse of the process of the court." I am satisfied on the basis of that judgement that I as the presiding judge in this court would and should exercise such jurisdiction in appropriate cases so I am satisfied that I have this jurisdiction. My next consideration was as to whether in this case the Crown is attempting such an abuse and accordingly I should either quash or stay the proceedings or acquit the defendant. The defendant made three main submissions. The defendant submitted that the proceedings were oppressive, that the Crown had in effect consented to any infractions which are alledged in the charges and thirdly that the Crown had oblique motives or an oblique motive for laying the charges. I may not have took those three submissions too well but I will be elaborating on them. Mr. Chiasson may have suggested at one point that oppression comes under the heading of abuse and the other two points constitute grounds for acquittal. In any event in my view all three points that were mentioned should be dealt with under the heading of abuse and that is how I am going to deal with them. Dealing first with the submission that these proceedings were oppressive. It is common ground between the parties that this defendant company operates a pulp mill in the area concerned. The mill was built in 1917. The mill presently employes approximately 500 persons in its operation and that it cannot produce and not violate Section 33 Subsection 2 of the Fisheries Act. In other words it seems to be common ground that any time the mill operates there will be a violation and in support of the submission with regard to oppression Mr. Chiasson said that the Federal Officers helped establish the standards which the company is bound by and the standards are such that even if they are adhered to infractions could still occur. Section 33 Subsection 2 of the Fisheries Act provides in part that no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish. I do not consider it an abuse of the process of this court to charge the defendant with an infraction or infractions of that sub section even if the mill were built in 1917 and employs 500 persons and can't operate without violations. Nor do I consider the fact that added to that Federal authorities assisted Provincial authorities to establish standards for the company under the Provincial Pollution Control Act changes the situation at all. That is creates an abuse of the process of this court. I considered very carefully the facts that I understand are not an issue and that is the light in which I considered them. The facts that this mill was built in 1917, that it employs such a large number of employees and no doubt not only the employees but the families of the employees are affected by the fortunes of their employer and I also considered carefully that in this particular case it is accepted that the mill can not operate without violating Section 33 Subsection 2. If the mill operates it discharges effluent and they would be a violation. However I do not consider the defence of abuse of process of this court to be available on the grounds that a law is oppressive. In my view such a defence is only available if the use of laws are used in an oppressive manner. If a law is oppressive then the remedy is for Parliament or

the Legislature as the case may be to change it and not for the court to decline to enforce it. It should not be concluded from this that I am of the view that Section 33 Sub section 2 of the Fisheries Act of Canada is opressive. It is not necessary for me to make any decision in that connection and I have not. Turning now to the matter of the Crown consenting to these infractions. The defendant introduced evidence or from the evidence it emerged that on March 30, 1973 there was a Letter of Transmittal and a Permit from the Director of the Provincial Pollution Control Branch to the defendant company. The provisions contained in that document were appealled to the Control Board by the company and their decision was given on August 7, 1973 in the form of a letter from the chairman of the Board to the council for the company which is Exhibit 3. On September 25, 1973 an appeal was launched to the Cabinet from the decision of the Pollution Control Board and Exhibit 10 was filed which was the Notice of Appeal. On October 22, 1973 the two charges were laid alledging infractions on September 10, 1973 and September 20, 1973. It is common ground that the hearing before the Cabinet took place early in November, 1973. As I have already mentioned council for the defendant introduced a number of letters and they were entered as exhibits by consent. In connection with the submission that the Crown consented to these infractions the defence relies strongly on a number of those letters particularly the letter of December 21, 1972 which was entered as Exhibit 4 and was a letter from Mr. McLaren, Regional Director for the Pacific Region, an officer of the Federal Fisheries Department, to Mr. Venables a Director of the Pollution

Control Board. I have considered these letters carefully. The defence further relies on the letter Exhibit 5 from Mr. Heskin, Manager of the Pollution Abatement Branch a branch of the Federal Department of Fisheries, to Mr. Klassen, Chief of the Industrial Division of the Pollution Control Branch in Victoria and also on Exhibit 6 which was a letter from Mr. McLaren to Mr. Venables which was dated March 5, 1973 and the Letter of Transmittal and the Permit were dated March 30, 1973. The defence also relied on the cross examination of the witness which was called by way of rebuttal by the Crown. Mr. Goyette gave evidence on the part played by Federal officials in the hearings to which I have referred and the preparation of the contents of the Letter of Transmittal and Permit which were entered as Exhibit 1 and the defence admits these all go to show that there was an overt participation on the part of the Federal authorities in setting provincial standards applicable to the defendant company and these standards are similar to the standards the Federal authorites intended to impose and he relied upon the letter Exhibit 8 which was a letter from Mr. McLaren to an officer of the defendant company. The defence says that the Federal authorities had in effect agreed to these standards which even if complied with it would still result in infractions of Sub section 2 of Section 33 of the Fisheries Act and that under these circumstances this prosecution constitutes an abuse of process. I do not agree with this submission. In my view the participation of the Federal authorities which I find as a fact occurred in the setting up of the provincial standards does not constitute consent to infractions of the Fisheries Act nor does the decision to formulate by the Federal authorities

similar regulations. The third point that the defendant relied upon was that the Crown had oblique motives for laying these charges and the defendant relied chiefly on the letter of October 24th written by Mr. Davis the Federal Minister to the Honourable James Lorimer who is a Minister of the Province of British Columbia and in addition Mr. Chiasson asked me to draw inferences not only from this letter Exhibit 7 but also from the evidence as a whole that the motive for the laying of this charge was, as I refer to it in my own expression, obliquein the sense that it is used by the Supreme Court of Canada. It is a word that I think covers precisely what Mr. Chiasson has in mind as far as the motive is concerned. There is no direct evidence as to any oblique motive on the part of the person who laid the information or on the part of any of his superiors or the Honourable Jack Davis or anyone responsible for the laying of this information. When I say direct there is no evidence that in the course of a conversation it was said that these charges were laid for political purposes or these charges were laid to put this particular company out of business. There is nothing direct. It is only by inference that I am being asked to conclude that there are oblique motives. Inferences to be drawn from the letter Exhibit 7 and inferences to be drawn from the evidence as a whole and I have concluded that it would be pure speculation and surmise on my part to conclude that the motive or motives for laying these two charges were oblique. I do not agree with the defendant's submission in that connection. I should mention and I want to make it clear that in the course of Mr. Kier's submission I asked him specifically as to what grounds he considered the questions and answers that occurred in his cross examination of the only witness that was called for the defendant company. The witness said that on the two particular days in question, September 10th and September 20th, 1973, the company had adhered to certain standards laid down in the Permit and the Letter of Transmittal and Mr. Kier cross examined him as to other days and there was objection but I allowed it in but said I would like argument as to its relevance. I asked Mr. Kier as to his position and as I understood the position he took it was only relevant as far as going to the question of whether there were oblique motives on the part of Mr. Davis or anyone else in the laying of these charges. In my view that evidence was doubtful that that evidence was relevant to issue and in considering this matter of oblique motive I disabused myself of that evidence and disregarded it entirely. I certainly did not consider it at all with regard to any other issue so it was only with that issue but with all the issues. I disregarded it. These three points that I have dealt with with some care and which I understand cover the position taken by the defence may well go to mitigation of sentence but they do not in my view constitute a defence. Having rejected these defences which in my view went, as I already said, to the matter of the abuse of the process of this court and which I felt should be determined initially I then considered the questions of whether or not the Crown had proven the guilt of the accused beyond a reasonable doubt. As I said the Crown's case consisted of admissions by the accused. Then, of course, there was further evidence in the form of defence evidence

direct and cross examination by the Crown and the rebuttal evidence. I considered the admissions carefully and I am satisfied beyond any reasonable doubt the admissions in themselves are sufficient evidence to prove the defendant guilty on both counts and I so find. Would it be convenient to speak to sentence at this time?

MR. CHIASSON AND MR. KIER:

Yes.

MR. KIER:

The facts are already before Your Honour. The Crown is alleging that on the 10th of September, 1973 there was a fish kill at the head of Neurotsis Inlet at the mud flats South of the mill and the Fishery officer paced off an area 100 yards by 100 yards and estimated there were three herring per square yard which comes up with a figure from 15,000 to 20,000 to 30,000 herring that were dead at that time in the mud flats. He said the fish had their mouths open and according to his belief they died of asphyxiation. That is a questions of opinion. He is just an ordinary fisherman who hold that belief. There is no question that there was a considerable quantity of fish killed at the time and this is what led the charges to be laid. The second day, September 20th, was the day that the Fisheries Officers could get to the mill and take samples. The samples were taken from the sewers. There are two sewers. The South sewer had 0 oxygen in the adjacent water and the North sewer had 2 parts per million. There must be 5 to 7 parts of oxygen per million in order for fish to survive. The ranges below that in the Inlet were all the way approximately 5 miles North of the mill to the head of the Inlet which would be 3 miles South of the mill. In that area it was below 5 parts per million of oxygen. The submission of the Crown is that on both occassions there was a violation of the Act. The Fisheries Department and Environment Service are aware that this is a daily act and that is why they have had negotiations continue with the corporation. My submission is that in dealing with the Pollution Control Board alone and not getting down to square one with the Environment Protection Service the company has been negligent in being a proper corporate citizen in the province of British Columbia. They should have taken more adequate steps since this section came into force which was in 1969 or 1970. They should have taken more adequate steps to get in touch with fisheries and work out a suitable arrangement. If it had been done the pollution would still be continuing for some time but the charges would not have been laid if proper steps had been taken. I might say that after the Pollution Control Board hearing last summer the mill was trying to cut down production so as to improve the quality of the water. I understand it shut down over Labour Day weekend and this was the start up. It was the third or fourth day of the start up and by that time the herring had gotten into the Inlet and the oxygen was being depleted and they had no where to go and they are a surface fish and of course this is mostly a surface condition so they died. If the mill had not shut down the herring would probably not have gotten all the way into the Inlet they would have turned around and gotten out of there. The effluent itself is harmful to fish. Even if there is oxygen in the water along with the effluent the effluent will still kill fish. The maximum penalty Your Honour that can be imposed under the Act is $5,000 on each count. That is in Section 33

Sub section 5 Your Honour. That maximum was given in Kamloops by Judge Archel. That was one of the first pollution charges under that Act and he imposed a $5,000 fine. There was one count. A pond was overflowing into a river and killing fish. I do not know how serious the case was but I do not think it was as serious as this. I was on the case of Regina vs. Columbia Cellulose some three years ago in Prince Rupert. It was similar circumstances as here. There had been a strike and the mill had been shut down for about two weeks and the fish had come into the Inlet and been killed when the mill started up again. The Crown requested the Judge not to impose Section 33 Sub section 7 to shut the mill down. I am again asking Your Honour not to do that in this case because it is inappropriate. We still have to have pulp mills operating. There was a $3,500 fine there. Recently Your Honour they have been charged once more by Fisheries Officers in Prince Rupert. The other one I am referring to is Judge Goulet of Burnaby. He had the case of Cewe Ltd. It was a gravel pit in the Coquitlam River area and during a heavy rain the gravel was washed off into the river and interfered with the fish eggs. He found the corporation guilty on one count and I believe the fine was $3,500. His Honour did make an order to have the company take proper steps to get the gravel pit operation in proper condition before the rains came this fall. That decision is under appeal. In the case here Your Honour may well consider that the maximum penalty is required here to deter not only this corporation but other ones who may be inclined not to obey the laws of Canada with respect to environmental control and pollution.

It may be cheaper to take these methods here than to try to stall off as long as possible without taking proper and prompt adequate steps to make their mills more in line with the environmental aspect of our law. I believe at the present time Your Honour nothing concrete has been developed with the Fisheries service yet with respect to the toxicity. Even if they meet these requirements of 4 parts per million at the government testing station that that is the subsistence level in that area that a fish may survive. That is approximately 10 or 11 miles away from the mill. We still have this deadly serious effluent going into the Inlet at a rate of 30 to 40 million gallons which requires 500,000 pounds of oxygen and a pound of oxygen as Your Honour may well surmise is a considerable amount of oxygen. It is almost difficult to understand how much oxygen that would mean. In view of this the Crown is asking for a very serious penalty be imposed in this case on both counts.

MR. CHIASSON:

Your Honour I am going to ask you to suspend sentence on this company quite contrary to the position my friend has taken. I am going to ask that on the basis of the facts and circumstances of this particular situation. I don't understand my friend when he says "don't shut the mill down." They are not asking you to shut the mill down but then he says fine them $5,000 a day for staying open. I don't understand that position and I don't think it is a position Your Honour should find inviting. I also don't understand my friend when he says make an example of this mill because as he well knows in this province their are two sulphite pulp mills. There are none other. There is the Port Alice mill and the Prince Rupert mill. The fact is that the Port

Alice mill is committed to spend some $50 million within a time frame which is a time frame the Federal government authorities have asked for. The fact is the Prince Rupert mill has done nothing at this point in time and how it is the Port Alice mill is to be an example with respect to some other mill and that be a just result I can not fathom. Your Honour the Honourable Jack Davis told the Honourable James Lorimer that if this company agreed to comply with the terms of the B.C. Pollution Control Branch Permit that would insure that this company would not prosecuted by the Honourable Jack Davis' Department. When this letter Exhibit 7 was written this company was complying with the B.C. Government Permit notwithstanding Mr. Davis' assurances to the Cabinet Minister in British Columbia and notwithstanding the fact that the company was adhering to that permit the company was charged and is here today. I think that is a very relevant fact in assessing any form of penalty. Your Honour has held that the proceedings are not an abuse of process and that is a decision that we have taken and we are not concerned with that at this point but the points that I raised to Your Honour in the context of the abuse of process and particularly the words of the Federal Cabinet Minister to the British Columbia Cabinet Minister and particularly the fact that this company has been complying with the B.C. Permit which permit was dictated to by the Federal authorities is surely evidence which is crucial and relevant in assessing a penalty on this company. I urge Your Honour that it is evidence of sufficient weight for Your Honour to suspend sentence in this matter. My friend refers to the toxicity problem. The fact is as I am instructed that the

Federal authorities have not indicated any toxicity standard which they think would be realisticly obtained at the Port Alice mill which is any higher than that to which the company is now committed. While it is true that there is a higher Federal standard in terms to the regulations those regulations do not apply to this mill. From a practical and realistic standard both the company and the Federal authorities know that the toxicity standard in the regulations can not be achieved in the present time frame. It can not be achieved by the end of December, 1978 nor has it been asked for. The issue of toxicity in terms of the fish kill I suggest is not a relevant issue. There is no evidence what so ever that toxicity had anything to do with the death of the herring. There are no measurements of toxicity on that date. The suggestion is that the fish asphyxiated so this problem of toxicity I suggest Your Honour is not a relevant issue of this case. My friend talks about the quality of the oxygen. My friend says that 5 to 7 parts per million is the required oxygen for fish to survive. My instructions are that that is not correct that the level is 2 parts per million. I think Your Honour will note that the level standard is set at 4 and surely a Government agency would not set it at 4 if that was lethal to fish. Basically in my position with respect to sentence I urge Your Honour as follows: firstly I urge all of the matters that I urged on Your Honour in my arguments on abuse of process. Secondly I note that this is a first offence for this company. That is a relevant feature. My friend indicated to Your Honour the fact that the mill had been down for 3 or 4 days. The circumstance of the fish kill on

September 10th was a peculiar phenomenon in terms of natural phenomenon. In fact in terms of operational phenomenon. There was what is described as a plankton bloom in the Inlet at a point in time just prior to the fish kill. A plankton bloom occurs when the plankton in the water blooms and puts a great deal of oxygen into the water. The water becomes super saturated with oxygen. It is a theory and it is possible that that fact played a significant part in drawing the fish into the Inlet in the first place. That is an unusual occurrance.,so the event that my friend says gave rise to at least one of the charges is an event that was peculiar and strange. The mill was down for the Labour Day weekend, the fish were intrigued by the water that was super saturated with oxygen and then an unfortunate event took place when the mill started up again. On September 10th, and again I suggest this is a very relevant for Your Honour in determining sentence, on September 10th and on September 20th this mill was in full compliance with the provisions of the B.C. Permit. The company fully agrees there were days in September and days in August when it was not in compliance but on the days of this charge it was in full compliance. I say in summary Your Honour that the basic facts of the unfortunate events coupled with the general circumstances I would urge an acquital in this matter. I particularly stress the position that was taken by the Honourable Jack Davis and his assertion to another Cabinet Minister that no charge would be laid in the very circumstances that existed on the dates with respect to which these charges have been laid. I think that Your Honour is a key factor in determining sentence with respect to this company. Thank you.

MR. KIER:

Your Honour may I raise one point?

THE COURT:

I would prefer you not to but I will not stop you if it is some mis statement. I am going to deal with this matter, very difficult matter, of sentence at this time. As with regard to my decision of innocence or guilt I will give reasons for my decision with regard to the sentence. There is a difference however between these reasons and my earlier reasons in that the reasons I am giving now are purely extemporaneous in that I have not reserved to consider them at all. This is probably the most difficult duty a judge faces is trying to determine what the appropriate sentence would be. In giving my reasons as to the matter of innocence or guilt I mentioned that the three points that had been made by the defence, that is the matter of oppression, consent of the Crown to infractions and oblique motives for laying the charge may go to mitigation of sentence. I realize now I put that very poorly. I meant of course that the circumstances upon which the defendant company relied in support of those points may go to mitigation and I have considered a number of those circumstances because Mr. Chiasson has in effect asked and reminded me of the evidence upon which he relied. It seems to me in this case there is a mitigating circumstance that the authorities were presumably aware for some time that when this mill operates there is a breach of the Fisheries Act for how long I can not say because I do not know how long this section has been in force. I considered also the matter of the participation by the Federal authorities in setting the provincial standards and that as Mr. Chiasson pointed out the standards are similar to the ones they themselves apparently intend to impose on the defendant company and that even if these standards are complied with it would be possible to breach the statute of the Fisheries Act. I also considered that Mr. Chiasson mentioned that it was a first offence. I listened carefully to the penalties that have been imposed on other cases but I find difficulty in comparing sentences in one case to the case that I am dealing with. That is in deciding a penalty I find it difficult to try and compare other sentences the overflowing of a pond, the washing out of gravel from a gravel pit particularly to me it does not seem to me to be of too much assistance to me. I considered all this and the submissions made to me in this case but there are mitigating circumstances but I am faced with two violations of the Fisheries Act. Mr. Chiasson very ably submitted that a suspended sentence would be appropriate. A suspended sentence would be appropriate in my view when with an individual I am hopeful in suspending sentence I may be instrumental in that individuals rehabilitation which of course does not apply, at least in my view this certainly does not apply in this case. I think a suspended sentence would be appropriate if there is just a strictly technical violation. I don't think that applies in this case. There has been an infraction of this act and I think that I have a duty to impose a real, not just a nominal, penalty. I think under all the circumstances that an appropriate penalty would be to fine the company on count 1 the sum of $1,500 and to fine the company on count 2 the sum of $1,500. The Crown has specifically asked me not to make any order as to referred to in the Act asking the mill to refrain and I am not making any such order. Again I would like before closing these proceedings to express my appreciation and gratitude to council. I would like to know if the company needs time to pay the fine. In my view those provisions are applicable equally to a corporation as to an individual. Do you have an application Mr. Chiasson?

MR. CHIASSON:

Yes. Unfortunately the mill manager has returned to Port Alice and I do not know how long it would take for a cheque to clear and I am instructed the fine would be paid from Port Alice. Normally I would suggest two weeks but I don't know what if any problems he may have in this area so I was wondering if we might have a month.

THE COURT:

Would a month be sufficient?

MR. CHIASSON:

Yes. It is really a matter of the processing of the cheque.

THE COURT:

Do you have any objections Mr. Kier?

MR. KIER:

None Your Honour.

THE COURT:

The fines on count 1 and count 2 will be payable on or before April 8, 1974. Thank you.

I hereby certify the foregoing to be a true and accurate report of the said proceedings.

Deputy Official Reporter

BRITISH COLUMBIA PROVINCIAL COURT

J.J. Anderson Prov. Ct. J.

Regina v. Imperial Oil Limited and British Columbia Hydro & Power Authority

Environmenal law -- Water Pollution -- Oil Spill -- Deposit of a deleterious substance in a place under conditions where it entered water frequented by fish -- Neither accused exercised all due diligence -- Both accused convicted -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(8).

Imperial Oil Limited (IOL) supplied fuel oil to a bus depot operated by British Columbia Hydro & Power Authority (Hydro). With the assistance of Hydro's employees, IOL's driver forcibly removed the cap from a fill pipe connected to an abandoned underground storage tank on the premises in question after failing to locate the correct fill pipe. Fuel was deposited into the abandoned tank with the result that it emerged from a dip pipe in the furnace room floor, flowed into a sump connected to the sanitary sewer system, and eventually reached the waters of Vancouver Harbour.

Held, both accused were convicted of depositing a deleterious substance in a place under conditions where it entered water frequented by fish. Hydro failed to exercise due diligence to prevent the commission of the offence (1)by failing to remove the abandoned fill pipe from the vicinity of the correct one, (2) by obscuring the position of the correct fill pipe by positioning it below the surface of the surrounding pavement, and (3) by failing to use an adequate plug to ensure that oil could not emerge from the dip pipe in the furnace room floor. Nor could IOL claim this defence, as it was vicariously liable for the acts of its employee who, despite his instructions, forcibly removed the incorrect cap and filled the abandoned tank when he ought to have realized that this procedure was wrong.

A.D. Louie, for the Crown.
H.M. Suiker, for the accused Imperial Oil Limited.
R.L. Louie, for the accused British Columbia Hydro & Power Authority.

November 7, 1974.

CANADA)
PROVINCE OF BRITISH COLUMBIA)
COUNTY OF VANCOUVER)
CITY OF VANCOUVER)

REGINA VS.

IMPERIAL OIL LIMITED
RED STAR PETROLEUM LIMITED
BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

BEFORE: J. J. ANDERSON, PROVINCIAL JUDGE

VANCOUVER, B.C.
NOVEMBER 7, 1974

APPEARANCES

A. D. LOUIE, ESQ.	APPEARING FOR THE CROWN
H. M. SUIKER, ESQ.	APPEARING FOR THE ACCUSED IMPERIAL OIL LIMITED
R. L. LOUIE, ESQ.	APPEARING FOR THE ACCUSED RED STAR PETROLEUM LIMITED and BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
M. LOLAND & V. BOLICK	COURT RECORDERS
M. LOLAND	TRANSCRIBER

(PROCEEDINGS HEREUPON RESUMED PURSUANT TO ADJOURNMENT)

V. BOLICK	COURT RECORDER
M. LOLAND	TRANSCRIBER

THE COURT: Yes, Mr. Louie, I know what you're here for.

MR. A. LOUIE: Call number nineteen and twenty-one on Your Honour's list, Imperial Oil Limited and B.C. Hydro and Power Authority.

THE COURT: I see Mr. Suiker here and Mr. Louie.

MR. SUIKER: Yes, Your Honour.

THE COURT: I'm sorry to have asked you gentlemen to wait and to wait so long. I had all my material, unfortunately, with me and I left it in the office this morning. I was ready to deal with this, but I should have had all my notes and everything ready to go. I won't relate the facts, as I had intended to do, to save time. I am satisfied with some regret that under the provisions of Section 33(8) neither B.C. Hydro nor Imperial Oil Company exercised all due diligence to prevent the commission of this offence. Insofar as Hydro is concerned, I am satisfied that their failure to exercise all due diligence can be noted in the position of the old pipe, in the position of the new pipe which was partly obscured and somewhat below the general leve of the remaining pavement, the fact that they were content with a wooden plug in the vent, which itself blew out,of course,when the oil was forced in and flooded their basement. I also find that they failed to notify the Imperial Oil Company or its people who came around to clean up of the location of the sump discharge, namely, into the City sewerage system. Imperial Oil, I think, is fairly obvious in that the fact that the young driver had the opportunity to look at his card and to note that he was called upon to deliver the oil into a brass outlet; his diligence, if I can put it that way, in seeking help with a hammer and coal chisel in getting the top off the plug of the old tank, which should have been an indication to him that there was something wrong. B.C. Hydro, after the event, seems to have been prepared to leave the cleanup of the oil to Imperial Oil Company, and I think it's only proper for me to comment on this time that Imperial Oil Company at that time carried out the cleanup in what I would think would be a most commendable manner in any way that it could be said. Indeed, so far as B.C. Hydro is concerned, it is in evidence that it was never cleaner than after Imperial Oil had cleaned it up. I think Imperial Oil also acted at this stage with what diligence they could in trying to get somebody from the City to find out where the sewer led, that Imperial Oil attempted on their own behalf to try to find out the outlet of the sewer and to

report at the first opportunity to the City; they made their report at the first opportunity to the Harbour Master. I am satisfied that the oil was discharged as a result of the facts which were alleged by the Crown. As a fact, I am also satisfied that oil is a substance which is deleterious to fish. On that basis, I find both the parties, B. C. Hydro -- I might say, Mr. Louie, that I'm not impressed with the statutory -- with your argument as to the statutory exclusion of B. C. Hydro's liability. I find them both guilty. The matter which, however, has concerned me and concerned me somewhat throughout the whole of the trial is the fact that the very outlet which was unfortunately the one which the oil flowed through on this particular occasion is used by the City of Vancouver to discharge raw sewage into the waters of Burrard Inlet, the raw sewage having been indicated by the biologist who was called also to be a substance which is deleterious to fish. The matter has given me some concern, that the City of Vancouver apparently is allowed to continue its practice of pumping a deleterious substance into the waters of Burrard Inlet without letter hindrance, and two other organizations are called upon the mat to answer in a court of law for doing substantially the same thing. I suppose maybe oil is a substance which is readily identifiable and quickly visible and I suspect about which there has been a certain

I am quite prepared to hear counsel as to what, if any, fine should be imposed. Who do I speak to first, Mr. Suiker?

MR. SUIKER: I might say, Your Honour, that with regards to sentencing, as I look on it, there are actually two steps here. There's the step where Your Honour has found that there was not due diligence exercised, but it's my submission that actually you've got to go all the way to the outfall.

THE COURT: Mm hmm.

MR. SUIKER: In other words, if Imperial Oil Limited had been able to get somebody from the City, the necessary steps could have been taken to actually have stopped and confined the outfall, the sewage -- and I would say that having regard to the conduct of Imperial Oil Limited throughout these proceedings and I think you will recollect that there was even evidence given that with regards to these caps you can't just rely on the card because there's the possibility of change. And so I would submit that a nominal fine in these very unusual circumstances, they're almost, you know, was a humorous situation even though it was unfortunately one of these things that is contributing to thepollution and that's what we're concerned about. But I think in these very unusual circumstances I would suggest a nominal fine.

THE COURT: Do you have anything to add, Mr. Louie?

MR. R. LOUIE: No, I have nothing to add, Your Honour. I would like to point out what Hydro has done since the accident.

THE COURT: Well, I can well imagine that it will never happen again, Mr. Louie.

MR. R. LOUIE: I am sure it will never happen again. At the moment, Your Honour, there is a sign over both caps and this is a metal sign and it reads, "Fuel Oil", and it's approximately six feet off the ground directly above the two caps. The incorrect cap has now been welded all the way around/as close to the --

THE COURT: And the staff has been informed not to lend a hammer and a coal chisel to anybody that wants to try to open it, I presume.

MR. R. LOUIE: There is a red metal tag affixed to the incorrect cap. That reads, "Do Not Use." And it is also Hydro's intention, pending the disposition of this action, to remove entirely that incorrect cap and to blacktop the whole area, Your Honour.

THE COURT: In the meantime, they might put a proper plug on the vent, Mr. Louie, if it occurs to them. Well, I must agree with Mr. --

MR. A. LOUIE: Your Honour, --

THE COURT: Yes, Mr. Louie. Now, what can you --

MR. A. LOUIE: May I interrupt you and speak to sentence?

THE COURT: I suppose you should.

MR. A. LOUIE: Although my friends have both asked for a nominal fine, it should be pointed out on the record that this is a statutory provision regulating certain actions of people and companies in regards to watching their method of operation, so to speak, regards to handling certain pollutants as oil in case of, in this case, oil, and that might in circumstances as did occur in this case, enter into the harbour. Now, the standard of care, as you have stated, is one that is beyond the reasonable man, a higher standard of care than in an ordinary case, as stated in the Regina versus Kirby case. But the Kirby case also states that the reasons for this type of legislation is to protect the general public in the interests of the public.

THE COURT: Well then, Mr. Louie, you would get back to the point that has concerned me more than anything else. Is the City of Vancouver being allowed without letter hindrance to pump raw sewage twenty-four hours a day, three hundred and sixty-five days in the year, into the very waters that you're complaining of now?

MR. A. LOUIE: With all due respect, Your Honour, we have no evidence in regards to the fact that it's being pumped continuously. However, the point, though, is that out of this error or oversight of the companies, there is damage done that is in excess of thousand -- thousands of dollars which were in fact a civil matter which is proceeding after this case. There is an instance of many thousands of dollars damage that has to be paid by somebody. This is no slight matter. The only point the Crown --

MR. A. LOUIE: No.

THE COURT: No.

MR. A. LOUIE: But the Crown states that a nominal fine would make this look as if it's a trifle case, but it isn't. It's a case which is, in its end result, could cost somebody hundreds of -- hundreds of dol -- thousands of dollars.

THE COURT: Well, as you tell me, that matter is being canvassed in the civil courts and undoubtedly there will be the proper remedy applied in that situation, --

MR. A. LOUIE: That's correct.

THE COURT: -- so I don't think that I should concern myself there. I have to consider what I think at this stage with what I consider a reasonable fine under the particular circumstances of a breach of the statutory provisions of the Fisheries Act. I do not believe that this calls for a substantial or exemplary fine. I believe the conduct of both of the parties, and particularly that of Imperial Oil Company, following the event itself and following those items which I find to be their lack of due diligence, and this was the result of the driver's error at the time, I find that the conduct was certainly commendable. There will be a fine accordingly against each of the defendants of one thousand dollars, and I feel that's as nominal a fine as I can make under the circumstances and --

MR. SUIKER: May I make a submission on this, Your Honour?

sentence

question of time to pay.

MR. SUIKER: No, it's not that. What concerns me is at the outset of the trial I raised a preliminary question. As I see the situation here, there is one offence. If I can go to Section 33(5), it says, "Any person who violates any provision of this section is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars for each offence." Now, my concern is here that surely there is only one offence, and I --

THE COURT: But there are two offenders, Mr. Suiker.

MR. SUIKER: Yes. No, but there's only one offence.

MR. A. LOUIE: My friend, I think, is indicating that the Crown proceeded on three counts, Your Honour, on an Information.

MR. SUIKER: And they charged us jointly and severally, too. And what concerns me is that, you know, how can you in fact find us guilty of an offence and yet also find Mr. Louie's client also guilty of an offence, because there is only one offence, and that was there was only one spill. And I raised this as a preliminary point to my friend --

THE COURT: Mm hmm.

MR. SUIKER: -- and I raised it at the outset, and I think myself that the drafting of the charge or a penalty section actually creates not a joint and several contributory liability, but only a liability for a separate offence, and there's no provision whatsoever for contributions. And so I find difficulty with the penalty section.

sentence discussion concluded

THE COURT: Well, you may have a point, Mr. Suiker, but that I think will have to be decided somewhere else. I find that there is one offence but two offenders. I'm certainly finding, I think, Count One is the easiest one for me to impose the fine on. Insofar as Count Two and Count Three are concerned, they are, as far as I can see, substantially exactly the same offence and they will of course be dismissed against both defendants.

MR. SUIKER: Thank you.

THE COURT: I imagine, what, a month time to pay is more than adequate --

MR. R. LOUIE: Yes.

THE COURT: -- to go through all the machinery of both B.C. Hydro and -- all right, thank you.

MR. SUIKER: Thank you, Your Honour.

MR. A. LOUIE: That's all the matters I have, Your Honour.

THE COURT: Thank you, Mr. Louie.

(CONCLUDED)

J. J. ANDERSON

Judge of the Provincial
Court of British Columbia.

I hereby certify the foregoing to be
a true and accurate report of the
evidence and proceedings herein.

A Duly Sworn Court Reporter

BRITISH COLUMBIA PROVINCIAL COURT

J.S.P. Johnson Prov. Ct. J.

Regina v. Standard Oil Company of British Columbia Limited

Environmental law -- Water pollution -- Gasoline spill -- Deposit of a deleterious substance in water frequented by fish -- Incident caused by employee of corporate agent of the accused -- Accused failed to exercise all due diligence in respect of its installation -- Accused convicted -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(8).

The accused, through its corporate agent, operated a bulk plant for the storage and sale of petroleum products adjacent to a harbour. While transferring gasoline from one tank to another, an employee of the agent allowed the receiving tank to overflow. Three hundred gallons of gasoline passed through an opening in a cement wall surrounding the tanks and flowed into the sea.

Held, the accused was convicted on a charge of depositing a deleterious substance in water frequented by fish. Even though the person who caused the spill was not directly employed by the accused, nonetheless he acted as their agent during the incident in question as he regularly operated the accused's machinery and sold its products. While the employee may not have been specifically authorized to undertake the transfer of fuel which resulted in the offence, such transfers were legitimately part of his duties at other times and therefore it could not be said that he acted beyond the scope of his authority and thus exonerated the accused.

Further, as the defences provided in the legislation had supplanted those found in the common law, the accused could not escape liability by claiming it had committed no *actus reus*. Nor was the statutory defence contained in s. 33(8) available to it, as the failure of the cement wall to contain the spilled gasoline indicated that the accused had exercised less than all due diligence in the construction, maintenance and inspection of its operation.

R. v. Churchill Copper Corporation Ltd. (1971), 5 C.C.C. (2d) 319; *The Queen v. Pierce Fisheries Ltd.*, [1971] S.C.R. 5; *Sweet v. Parsley*, [1969] 2 W.L.R. 470, 1969 1 All E.R. 347; *R. v. Industrial Tankers Ltd.* (1968), 4 C.C.C. 81; *Blaker v. Tillstone*, [1894] 1 Q.B. 345; *Commissioners of Police v. Cartman*, [1896] 1 Q.B. 655; *R. v. Teperman and Sons Ltd.*, [1968] 4 C.C.C. 67; *Tecso Supermarkets v. Nattrass*, [1972] A.C. 153; *R. v. Cates* (1909), 14 B.C.R. 280; *R. v. Labrie* (1914), 23 C.C.C. 349; *Riverstone Meat Co. Pty. Ltd. v. Lancashire Shipping Co. Ltd.*, [1961] A.C. 807; *R. v. Jordan River Mines Ltd.*, [1974] 4 W.W.R. 337; *The Vessel "Dilkara" v. The Queen*, unreported, B.C.C.A.; *R. v. Sam Constentino Ltd.*, [1966] 1 C.C.C. 79; *R. v. The "M.V. Allunga"*, [1974] 4 W.W.R. 435; *R. v. Canadian Legion* (1971), 14 Crim. L.Q. 106, (1971) 21 D.L.R. (3d) 148; refd to.

F. Haar, for the Crown.
H.P. Legg, Q.C., for the accused.

January 20, 1975.

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

DISTRICT OF POWELL RIVER)
COUNTY OF VANCOUVER)
PROVINCE OF BRITISH COLUMBIA)

REGINA
v.
STANDARD OIL COMPANY
OF BRITISH COLUMBIA LIMITED

Trial: November 18, 1974

BEFORE: His Honour Judge J. S. P. Johnson

Mr. F. Haar, Counsel for the Crown
Mr. H. P. Legg, Q. C., Counsel for the Defence

REASONS FOR JUDGEMENT

The accused, who I shall refer to as Standard Oil is charged on an Information with two counts under Section 33(2) of the Fisheries Act of Canada.

> Count 1 - "on or about July 11, A. D., 1974, at Powell River, in the Province of British Columbia, did UNLAWFULLY deposit a deleterious substance, to wit: gasoline, in water frequented by fish."
>
> Count 2 - "on or about July 11, A. D., 1974, at Powell River, in the Province of British Columbia, did UNLAWFULLY permit the deposit of a deleterious substance, to wit: gasoline, in water frequented by fish."

the difference between the counts then being "did unlawfully deposit" and "did unlawfully permit the deposit".

Standard Oil pleaded not guilty to both counts.

Standard Oil is the owner of land and the installations thereon of a gasoline products bulk plant situate in the Municipality of the District of Powell River, British Columbia. This bulk plant is located on the foreshore adjacent to the Powell River boat harbour. The installation includes six large fuel tanks and two smaller tanks, a cement wall surrounding the tanks on three sides towards the sea. The floor of the bulk plant area is clay. There is a walkway over the cement wall to the harbour to a float used for the selling of gasoline products to boats. In order to supply gasoline to the marine float gasoline is transferred from one of the large tanks to one of the smaller tanks of about 3,000 gallons; at the time of transfer a purple dye is added to the gasoline and it is then designated marine gasoline.

The bulk plant is operated by Andy Culos Ltd., agent of Standard Oil. Andy Culos is a principle of the agent corporation and although not the majority shareholder, he is the manager of the business. On July 11, 1974 at about 4:30 p. m., Andy Culos left the bulk plant. There were no other employees left except a young man sixteen years of age named Michael Keddy, who was to keep the marine float open for sales until 8:00 p. m.. Keddy was not too busy with boat sales, so, about 6:15 p. m., he operated the necessary valves and switches to fill the marine tank with gasoline from a large tank and to add the purple dye. After starting the tank filling process, he then left the marine tank and went back to the marine float about 200 feet away. Keddy returned to the marine tank after 10 to 12 minutes and found that gasoline had escaped from the marine tank and was flowing on the clay floor of the bulk plant. Keddy then turned off the marine tank filling equipment and immediately phoned Andy Culos, who attended in about five minutes. Andy Culos phoned the Powell River Fire Marshall and subsequently the Fire Department attended and assisted to prevent any fire danger. The Fire Department crew gathered about 300 gallons of gasoline from the shore of the bulk plant and they directed high pressure water from hoses on the harbour area outside the bulk plant cement wall.

About five minutes after seeing that the gasoline had escaped from the filling tank Keddy noticed that the gasoline had escaped through the cement wall and was flowing onto the surface of the water in the harbour. Andy Culos saw the gasoline spreading over the water on his arrival at the plant and described the gasoline as going through the cement wall at a point near the walkway to the gasoline float and at a point where the wall was covered by the wood covering. Andy Culos had been working at this plant since about 1956, and the plant and the wall had been inspected regularly by Standard Oil. The clay floor had some gradient so that rain water would gather at the low side of the plant near the walkway and water would lay in puddles up to a foot deep against the wall. Andy Culos said that he was very surprised that the wall had not retained the gasoline which had escaped from the marine tank. He had been of the opinion that the cement wall and the clay floor were constructed, inspected and maintained in such a way that the gasoline spill would not escape. He had no explanation of why the gasoline did in fact escape into the harbour water.

The Fire Marshall examined the gasoline flowing on the harbour side of the cement wall and described the flow about 1" to 2" deep by 1½" to 2½" wide, coming from the ground at the base of the wall and flowing into the water. The description I accept of the amount of gasoline that entered the water was a surface area along about 200 feet of foreshore in a triangle shape from a narrow point where the gasoline

entered the water getting wider along the foreshore to a width of about 30 feet. Andy Culos estimated this amount of gasoline to be about 300 gallons.

From the evidence I heard I find that gasoline is a deleterious substance and this gasoline from the Standard Oil bulk plant entered water frequented by fish on July 11, 1974 at Powell River, the Province of British Columbia.

One of the defences of Standard Oil is that Standard Oil did not deposit or permit the deposit of this gasoline and that Standard Oil is not liable or responsible for the acts of Keddy and that they are not guilty of either offence because Keddy is not an employee or agent of Standard Oil within the meaning of Section 33(8) of the Fisheries Act which is as follows:

> "In a prosecution for an offence under this section or section 33(D), it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission."

It is important to examine in detail the acts, duties, relationship and responsibilities of Keddy as I accept them given in evidence.

Keddy was a new employee of Andy Culos Ltd., having been employed the previous March. There are two youths hired to operate the marine float, the other youth had worked the year before and had more experience than Keddy and worked the morning to afternoon shift; Keddy worked the afternoon to to evening shift. Keddy's prime duty was to sell gasoline products to the boats at the float in the harbour. Keddy was being taught by the other experienced youth to fill the marine tank with purple gas for the marine float. Andy Culos said that Keddy was not authorized to fill the marine tank on his own and that his responsibility was to leave this for the other youth in the morning. Keddy said that he had on one previous occasion filled the marine tank on his own, Andy Culos did not know about it. At the time of this incident Keddy was the only person at the bulk plant. Keddy said that he had had some instructions from Andy Culos, particularly that he should not leave the marine tank while it was filling. This is exactly what Keddy did and this would appear to be the reason for the spill.

Keddy was not an employee of Standard Oil. He was an employee of Andy Culos Ltd., which company was the contractual agent of Standard Oil. Does Sec. 33(8) include employees of agents or was Keddy also an agent of Standard Oil in addition to Andy Culos Ltd.?

The Defence further argues that if it were found that Keddy was an agent of Standard Oil then Standard Oil is still not liable for the acts of Keddy because Standard Oil had no knowledge that Keddy was acting as their agent and, in addition, in this case, Keddy was acting beyond the scope of his authority and Standard Oil was not then responsible for acts of such an agent.

It is then necessary to define the word "agent" as contained in Sec. 33(8) of the Fisheries Act. The word does not have any definite meaning but does describe a relationship between parties that happens to exist. English

and Empire Digest Volume 1, Agency Part 1(4), page 311

> "No word is more commonly and constantly abused than the word "agent".

Part 1(6)

> "An agent in the general sense of the word is any person who happens to act on behalf of another (Lord Alverstone, C.J.) - R. v Kane, [1901] 1 K.B. 472".

Section 11 of the Interpretation Act of Canada says;

> "11. Every enactment shall be deemed remedial, and shall be given such fair large and liberal interpretation as best ensures the attainment of its object."

The charges in this case are under Sec. 33(2) of the Fisheries Act which is environmental control legislation. It is therefore necessary to look at the objects of the legislation and the interpretation of this Act and other environmental legislation to interpret this Act.

The object or intent of this type of legislation is for the protection of the health and welfare of the community and the Fisheries Act and other similar Acts have been interpreted that there is an absolute liability against those who are in breach of the provisions of the Act.

The law on this subject and the interpretation of Sec. 33 of the Fisheries Act was well canvassed by my brother Judge Arkell in the often referred to case of R. v Churchill Copper Corporation LTd., 5 CCC (2d) p. 319 at page 322;

> "In R. v. Pierce Fisheries Ltd. the Supreme Court of Canada held that the offence of violating s. 3(1)(b)

of the Regulations to the Fisheries Act is an offence of strict liability, of which 'mens rea" is not an essential ingredient. At p. 202 Ritchie, J., states"

"In considering the language of the Regulation, s. 3(1)(b), it is significant, though not conclusive, that it contains no such words as "knowingly", "wilfully", "with intent", or "without lawful excuse", whereas such words occur in a number of sections of the Fisheries Act itself which create offences for which mens rea is made an essential ingredient.

. . . .

This appears to me to be a clear indication of the fact that in making provision for offences under the Fisheries Act, Parliament was careful to specify those of which it intended that guilty knowledge should be an essential ingredient.

Also in the Pierce Fisheries decision, Ritchie, J., referred to the English case of Sweet v. Parsley, [1969] 2 W.L.R. 470 [1969] 1 All E.R. 347, where Lord Pearce states at p. 481:

"Parliament might, of course, have taken what was conceded in argument to be a fair and sensible course. It could have said, in appropriate words, that a person is to be liable unless he proves that he had no knowledge or guilty mind. Admittedly, if the prosecution have to prove a defendant's knowledge beyond reasonable doubt, it may be easy for the guilty to escape. But it would be very much harder for the guilty to escape if the burden of disproving mens rea or knowledge is thrown on the defendant. And if that were done, innocent people could

satisfy a jury of their innocence on a balance of probabilities. It has been said that a jury might be confused by the different nature of the onus of satisfying "beyond a reasonable doubt" which the prosecution have to discharge and the onus "on a balance of probabilities" which lies on a defendant in proving that he had no knowledge or guilt. I do not believe that this would be so in this kind of case."

Also in Sweet v. Parsley, Lord Diplock states at p. 487:

"Where penal provisions are of general application to the conduct of ordinary citizens in the course of their everyday life the presumption is that the standard of care required of them in informing themselves of facts which would make their conduct unlawful, is that of the familiar common law duty of care. But where the subject-matter of a statute is the regulation of a particular activity involving potential danger to public health, safety or morals in which citizens have a choice as to whether they participate or not, the court may feel driven to infer an intention of Parliament to impose by penal sanctions a higher duty of care on those who choose to participate and to place upon them an obligation to take whatever measures may be necessary to prevent the prohibited act, without regard to those considerations of cost or business practicability which play a part in the determination of what would be required of them in order to fulfil the ordinary common law duty of care. But such an inference is not lightly to be drawn, nor is there any room for it unless there is something that the person on whom

> the obligation is imposed can do directly or indirectly, by supervision or inspection, by improvement of his business methods or by exhorting those whom he may be expected to influence or control, which will promote the observance of the obligation (see Lim Chim Aik v. The Queen [1962] A.C. 160, 174).

(The italics are my own for emphasis.)

Parliament, in the 1969-70 amendments to the Fisheries Act, obviously adopted the "fair and sensible course" suggested by Lord Pearce in Sweet v. Parsley when they enacted s-s.(8) of s.33.

Also, as stated by Lord Diplock in Sweet v. Parsley, the inference is not to be lightly drawn that this is an offence of absolute liability, "unless there is something that the person on whom the obligation is imposed can do directly or indirectly, by supervision or inspection, by improvement of his business methods or by exhorting those whom he may be expected to influence or control, which will promote the observance of the obligation". Here the defendant company could "promote the observance of the obligation" imposed by the Fisheries Act by the adoption of direct supervision, inspection and improvement of their operation."

R. v. Industrial Tankers Ltd., CCC 1968, Vol. 4, p. 81, is case dealing with oil pollution under Ontario legislation (Ontario Water Resources Commission Act) with some similarity in circumstance as this case which deals with the matter of the liability of corporation for the acts of their employee in respect to the absolute liability under environmental legislation. The facts of the case are set out at page 82;

> "The facts may be summed up as follows: Industrial Tankers, Ltd., is a company which since January, 1966, has been the lessee of lands and a builing on the east bank of Morrison

Creek in the Town of Oakville, in the County of Halton, in the Province of Ontario, which shall be referred to hereafter as "the company".
The company operates a fleet of industrial tanker trailers, carrying among other cargoes, machine oil, and has facilities on the premises for cleaning the tanker trailers from time to time, and for discharging the waste into the sanitary sewer system of the Town of Oakville, with the consent of the town. Since January, 1966, the procedure for cleaning the tanks was to steam them and drain them into a pit which was located inside the building on these lands. The waste material was gathered into interceptors located in the pit and the remaining water was discharged into a drain in the building which was connected to the sanitary sewer system of the Town of Oakville, with the consent of the town.

Blair Douthwright is an employee of the company, whose job it was at the time in question to clean the tanks. Douthwright's instructions given to him from time to time, and in particular in January and June, 1966, were that all cleaning was to be done inside the building and under no circumstances was any cleaning to be done on the lot and under no circumstances was anything to be discharged into the ground or into Morrison Creek.

On the evening of June 15, 1967, one of the tankers was parked on the lot, about 30 feet from the edge of Morrison Creek. Douthwright checked the valve on the tank and believed it to be shut. In fact, it was open. He then climbed to the top of this tanker and opened the manhole to examine the inside to determine whether the tank needed cleaning. As soon as he opened the manhole, the vacuum, which had kept the remainder of the machine oil inside the tank, was released causing about ten gallons to pour on the ground, and some of it escaped from the ground into Morrison Creek, causing a milky discolouration of the creek. When Douthwright noticed this happening, he shut off the valve at the bottom of the tank and he claimed that the valve is such that it is impossible to tell for certain whether it is open or shut. Douthwright claimed that he had no intention to dump the oil or to pollute the creek, and that this was an isolated case, and an accident.

His Honour Judge Sprague says, starting at page 86:

"The general object of the Ontario Water Resources Commission Act is to preserve the purity of water in the Province of Ontario, and s.27(1) is specifically aimed at prohibiting pollution.

In Blaker v. Tillstone, [1894] 1 Q.B. 345 at pp. 347-8, Lord Coleridge, C.J., said:

"The object of the Act is that people shall not be exposed to the danger of eating and drinking poisons..."

This would appear to apply, with perhaps some qualifications, to s.27(1) of the Ontario Water Resources Commission Act. Reference is made to: Hobbs v. Winchester Corp., [1910] 2 K.B. 471.

In construing s.27(1) of the Act, the reasons given by Lord Russell of Killowen, C.J., in Commissioners of Police v. Cartman, [1896] 1 Q.B. 655 at pp.657-8, are helpful:

"The learned magistrate believed that the respondent bona fide gave instructions to his barman that no drunken persons should be served and that he intended those instructions to be acted upon; but the question is whether that fact affords any answer to the charge.

In considering this question, we must see what is the object of the Act, and how far that object would be effected or defeated if the construction contended for by the respondent were given to this section. There can be no question as to the object of this section: it was intended in the interest of public order to prevent the sale of intoxicating liquors to drunken persons. It must be remembered that the persons from whom alone intoxicating liquors can be obtained are licensed persons: how do they carry on their business? From the nature of the case it must be largely carried on by others on their behalf; it is true that sometimes the licensee keeps in his own hands the direct control over his own business; but in the great majority of cases it is not so, the actual direct control being deputed to other persons: are the licensees in these latter cases to be liable under the section for the acts of others? In my opinion they are, subject to this qualification, that the acts of the servant must be within the scope of his employment. The scope of the manager's authority in my view receives its limitation from the scope of his employment: authority is given him to do all acts within the scope of his employment. It makes no difference for the purpose of this section that the licensee has given private orders to his manager not to sell to drunken persons; were it otherwise, the object of the section would be entirely defeated..."

It is common knowledge, perhaps within judicial knowledge, that industries in this industrial age have a great capacity to pollute the waters. The magnitude and impersonal nature of present day industrial operations are such that it is usually impossible to trace pollution to any individual. It often happens that the source of the pollution is simply a drain or culvert which comes from within the plant or factory. Industrial operations are usually such a complex combination of man and machinery and equipment that it is impossible to contribute the pollution to an act of any single employee.

Where it is possible to trace the pollution to the act of an individual employee, the corporation should not be able to hide behind the corporate mask, and rely on the fact that the instructions have been given to the employees not to do the forbidden act, particularly where the only way of proving the act is by calling the employee of the corporation as a witness for the prosecution. At best, evidence that an employee has acted contrary to instructions is a matter for mitigation of the penalty: Cundy v. Le Cocq (1884), 13 Q.B.D. 207.

The company is liable for the act of its employees within the scope of their employment.

R. v Teperman and Sons Ltd., C. C. C. 1968, Vol. 4 p.67 is a judgement of the Ontario Court of Appeal dealing with the Construction Safety Act of Ontario and finds that a corporation may be liable for the acts of their agent by reason of public policy in matters dealing with danger to human life. Schroeder, J.A. says at page 74:

> "An examination of the statute makes it plain that its scope and object is to promote the safety of workmen employed in the construction industry or engaged in the alteration, repair, demolition or moving of buildings or like projects. A consideration of its terms and objects points to the statute as one enacted for the protection and safety of a large class of the public, and its prohibitions are not such as fall within the proper domain of criminal law. Mens rea is not a necessary ingredient of the offences with which we are —

> concerned in the present case and a constructor, whether a natural person or a corporate body, is vicariously responsible for breach of the pertinent provisions committed by any servant or agent, even though he is unaware of them, in those cases where the conduct constituting the offence was pursued by such servant or agent within the scope or in the course of his employment: Coppen v. Moore (No.2), [1898] 2 Q.B. 306.

and at page 77:

> "It is now well settled in Canada that a corporation can be convicted of some offences, particularly those involving a dereliction of duty to avoid danger to human life or limb: Union Colliery Co. v. The Queen (1900), 31 S.C.R. 81, 4 C.C.C. 400. Statutory offences from which mens rea is excluded as an essential ingredient present no difficulty and a limited company can, as a general rule, be indicted for the criminal acts of its human agents where the circumstances are such that the agents' acts or omissions are to be considered the acts or omissions of the company. The act or omission of the agent while exercising the authority delegated to him may, in the interest of public policy, be imputed to his employer by imposing penalties upon the corporation for which he is acting."

Could then Keddy be described as the agent of Standard Oil when he opened the valves of the marine tank that caused the gasoline spill?

The tank installations and machinery that Keddy handled was the property of Standard Oil. Keddy's job was to handle and sell Standard Oil products. The contractual agent of Standard Oil, Andy Culos Ltd., was a body corporate and only manner in which the machinery could be operated was by the physical actions of an employee of Andy Culos Ltd. It is not the intent of the legislation that a corporate body could hide from absolute liability from the actions of their employees or agents by a chain of corporate bodies. The liberal interpretation of the Fisheries Act is that any person within the scope of their authority who handles the machinery of the corporation is the agent or the employee of the corporation.

I find that Keddy was an agent of Standard Oil and did act within the scope of his authority. To the defence that Standard Oil did not know Keddy and had no knowledge that he would operate their machinery, I find that Standard Oil knew that some employee of Andy Culos Ltd., would operate the machinery to fill the marine tank and Standard Oil did not need to know the particular person performing that act, see Sec. 33(8) of the Fisheries Act. The installation was there, the hand of some person was required to perform those functions. The following cases have been referred to to come to this conclusion.

The House of Lords case Tesco Supermarkets Ltd. v. Nattrass [1972] A.C. 153 at page 171;

> "Reference is frequently made to the judgment of Denning L.J. in H. L. Bolton (Engineering) Co. Ltd., v T. J. Graham & Sons Ltd. [1957] 1 Q.B. 159. He said, at p. 172:
>
> "A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more

> than hands to do the work and cannot be said to represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such."

The corollary of this statement is that the hand that holds the tools of the corporation is the employee or agent of the corporation. And, at page 176 as to knowledge of a corporation;

> "It has not been suggested that Tesco (i.e. the limited company) could not be held to have committed the offence. In this connection reference may be made to a passage in the judgment of Viscount Reading C.J. in Mousell Brothers Ltd. v. London and North-Western Railway Co. [1917] 2 K.B. 836. He said, at p.844:
>
> "Prima facie, then, a master is not to be made criminally responsible for the acts of his servant to which the master is not a party. But it may be the intention of the legislature, in order to guard against the happening of the forbidden thing, to impose a liability upon a principal even though he does not know of, and is not a party to, the forbidden act done by his servant. Many statutes are passed with this object. Acts done by the servant of the licensed holder of licensed premises render the licensed holder in some instances liable, even though the act was done by his servant without the knowledge of the master. Under the Food and Drugs Acts there are again instances well known in these courts where the master is made responsible, even

> though he knows nothing of the act done by his servant, and he may be fined or rendered amenable to the penalty enjoined by the law. In those cases the legislature absolutely forbids the act and makes the principal liable without a mens rea."

As to the matter of Keddy acting within the scope of his authority, I find a sufficient similarity in the facts of R. v. Industrial Tankers Ltd., supra, in that case the employee did an act which he was instructed not to do which resulted in the oil spill and the corporation was found liable.

Keddy did an act which he was being trained to do, he did the act at a time when he was instructed not to perform this duty. The distinction in the cases seems to be that if the employee had not at any time, or in any way, the authority to perform the duty and did in fact do the offensive act, it may be held to be beyond the scope of that employee's authority, but if the employee had the authority to do the act at some time that it may be within the scope of his authority. When the barman, whose regular duty is to sell liquor, sells liquor from the premises after licence hours, the licencee is still liable for his employee. R. v. Cates (1909) 14 B.C.R. 280, but where the cook, whose job is not to sell liquor, sells liquor from the premises after hours, the licencee is not liable. R. V. Labrie (1914) 23 C. C. C. 349 (Sask.).

In addition, if any employee is left as the sole person in charge of the employer's establishment, then it may be interpreted that the employee is authorized to operate the whole premise on the employer's behalf and the employer may be liable for any prohibited acts of the employee. R. v. Canadian Legion - Vol. 14, 1971-72, Criminal Law Quarterly, p. 106.

The second general defence raised by Standard Oil is that of latent defect and defence counsel argues that the cement wall

surrounding the bulk plant was built to contain petroleum products spilt in the plant and that this wall contained water, was regularly inspected and that the leak of gasoline through the cement retaining wall was the result of a latent defect after Standard Oil had exercised all due dilligence and that this, in law, is a good defence. Riverstone Meat Co. Pty. Ltd., v. Lancashire Shipping Co. Ltd., (1961) A.C.H.L. (E.), 807, and particularly from Viscount Simonds judgment page 843, quoting the decision Coody J. of the Supreme Court of British Columbia.

> "Two Canadian cases may also be mentioned in the interest of uniformity. In Australian Newsprint Mills Ltd. v. Canadian Union Line Ltd., it was said by Coady J. in the Supreme Court of British Columbia: "It seems to me that the due diligence "imposed by the statute and as interpreted by the authorities is "not made out by evidence that this duty someone else was "engaged to perform on the behalf of the defendants—someone on "whom the defendants relied and in whom the defendants had "confidence. The duty of the defendants was to exercise due dilligence and this appliesto their servants and agents and that duty is absolute, except as to latent defects not discernible "by the exercise of due diligence." The learned judge supports this proposition by reference to numerous authorities, many of which I have cited. The other case is Canadian Transport Co. Ltd., v. Hunt, Leuchars & Hepburn Ltd., The City of Alberni, which contrasts the liability of the shipowner under the Water Carriage of Goods Act and his right to limit his liability under the Canada Shipping Act, 1934."

This case is also interesting in respect to delegation of a responsibility by a contractual relationship and that the corporation delegating the authority is still liable for the acts of the employee of the independent contracting.

H. L. (E.) 1961, Riverstone Meat Co. Pty. v. Lancashire Shipping Co. Ltd.,

> "and the obligation imposed on the shipowner in the work of repair is one of due dilligence by whomsoever it may be done, even when the work delegated to the independent contractor calls for technical or special knowledge or experience, and the negligence was not apparent to the shipowner."

The defence further relies on the law that no actus reus is a defence to a strict liability charge. It should be noted that the words "strict liability", Pierce case, "absolute liability", Churchill Copper case, R. v. Jordan River Mines Ltd., (1974) 4 W.W.R. 337, and the unreported decision of the Court of Appeal of British Columbia, The Vessel "Dilkara" v. The Queen, and the words "absolute prohibition", Ontario Court of Appeal decision, R. v. Sam Constentino Ltd., 1966, Vol. 1. C. C. C. 79 have the same meaning in that mens rea is not a defence in these cases. But the law is that if there has not been any actus reus on the part of the person charged with the offence, they will not be convicted in a strict liability case. Defence counsel sites as an authority the case R. v. M. V. Allunga (1974) 4 W.W.R. 435. This case was in respect to an oil spill and a charge under S. 5 of the Oil Pollution Prevention Regulations.

Regina v. "M. V. Allunga".

Defendant was charged under S. 5 of the Oil Pollution Prevention Regulations with discharging a pollutant, namely, oil, into the waters of New Westminster harbour. The discharge was due to the failure of coupling in a sea-water ballast line which passed through a fuel oil tank; the defect was latent and the discharge could not have been prevented by the exercise of reasonable care since the failure of the coupling could not have been foreseen. Held, the charge should be dismissed; although the offence with which defendant was charged was one of strict liability, it did not follow that once the actus reus was proved there was no defence available; there must be shown a mind willing to do the act constituting the offence before it can be said to be complete: Regina v. King, [1962] S.C.R. 746, 38 C.R. 52, 133 C.C.C. 1, 35 D.L.R. (2d) 386 applied:"

The 'Allunga' case should be compared with the similar 'Dilkara' cases, supra, which was submitted by crown counsel. This was also a charge under Sec. 5 of the Oil Pollution Prevention Regulation which is under the provisions of the Canada Shipping Act, R.S.C. 1970, Chap. S-9. The facts of the 'Dilkara' case, which I find have some similarity to the case at hand, is that the ship was taking on fuel at North Vancouver, the engineer miscalculated the quantity required and the full tanks over-flowed causing a spill in the harbour. The defence was that there was an electrical alarm on the tank to warn when the tank was close to full and the pumping could be stopped, in this instance there was a malfunction of the electrical alarm unit and this resulted in the oil spill. The 'Dilkara' judgment says in part, Per Curiam

> "Counsel for the appellant put his argument on the basis that in a prosecution of a ship for an offence it is sufficient proof that the ship has committed the offence to establish that the act or neglect that constitutes the offence was committed by any person on board the ship. That submission is based upon the decision of this court in Regina v. The Vessel "Aran" (1973) 9 C.C.C. 179.
>
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>
> It was contended on behalf of the appellant that because of the judgment in Regina v. The Vessel "Aran" (supra) section 757 must in effect be read as providing:
>
> > "In a prosecution of a ship for an offence under this Part, it is sufficient proof that the ship has committed the offence to establish that the act of discharging oil was committed by...any person on board the ship."
>
> It was then submitted that the failure of a person on board the ship to use an alternative means to that recommended by the shipbuilders to calculate the quantity of oil required is not the act of discharging oil and such person cannot be taken to have committed the act

> which constitutes the offence. It was further submitted that the act of discharging oil occurred as a result of a latent defect in an automatic sounding alarm system and was not committed by a person on board.
>
> Counsel for the appellant conceded that the Act imposes upon the ship an absolute liability and it is not necessary for the Crown to prove mens rea on the part of the ship acting through those on board her. That proposition was accepted by this court in the judgment in Regina v. The Vessel "Aran" (supra) where it was also held that it is not necessary for the Crown to prove the specific act or neglect which caused the offence to take place. At page 181 of that judgment, Bull, J.A. said:
>
> > "I agree with the reasoning of the learned Judge of the Supreme Court for his rejection of that submission. In my opinion the onus on the Crown to establish an offence under s.761 [now s.752] of the statute, and s.5 of the Regulations, is merely to prove that an act or a neglect which under the enactment is declared to be, or to constitute, an offence, has occurred and that that was committed by the master or a person on board the vessel. The statute provides various other acts and other neglects than 'discharge of oil...' which are declared to be, or to constitute, offences. For example, it is an offence under s.763(1) [now s.754(1)] for a ship to fail to comply with certain requirements of a pollution prevention officer, and it is an offence under s.763(2) [now s.754(2)] for a

> for a ship to enter certain waters without having a particular certificate on board.
>
> Also it is an offence for a ship to contravene any of a long list of regulatory provisions enacted under s.739 [now s.730] both of a mandatory and of a prohibitory nature.
>
> Section 766 [now s.757], on the language of which the appellant relies, has application to all offences committed by a ship and not merely to the offence of discharging a pollutant contrary to s.761 [now s.752]. In that context, it is clear that the words 'act or neglect that constitutes the offence' in s. 766 [now s.757], refer to the thing done or omitted to be done that is declared to be an offence and not, as the appellant says, to the reason for, or the cause of, that thing being done or omitted to be done.
>
> The latter view would mean that the phrase 'constitutes the offence' would be tortured to mean 'caused the offence' or 'brought about the offence'. That view I must reject. It follows that, in the case at bar, all the Crown had to prove was that a discharge of oil or an oily mixture emanated from the ship and that a person, identified or not, on board the vessel caused that discharge, and it was not necessary to show what particular conduct or what particular omission of that person resulted in the discharge taking place."

I think that when Bell, J. A. used the word "caused" in the last sentence of the foregoing passage, he used it in the sense of "committed".

In view of the foregoing judgment it seems to me it

> is not open to the appellant to contend that because a defective alarm failed to sound the resulting discharge of oil was attributable to the fault of some person not on the ship. The inescapable facts are that the persons on the vessel were filling her tanks with fuel; they were actively in control of that operation, including the estimation of the quantity of oil to be taken on board; the ordering of fuel; and the giving of orders to those on the fuel barge to commence and stop the pumping of fuel from the barge to the ship. Liability for a discharge of oil being absolute it is no answer for the appellant to say the discharge would not have occurred but for the fault of persons not on board or because at an earlier stage, a miscalculation as to the quantity of oil to be ordered had occurred."

The article of Don R. Stuart on Mens Rea, Vol. 15 1972-73, The Criminal Law Quarterly, Page 160, contains some interesting observations of the laws of Canada respecting strict liability and the elements of actus reus, starting page 175.

After reading the words of Sec. 33(8) Fisheries Act "unless the accused establishes that the offence was committed without his knowledge or consent, and that he exercised all due dilligence to prevent its commission", and considering that this section was amending legislation 1969-70, C. 63 and considering the intent and object of this section of the Fisheries Act as environmental control legislation, I find that the actus reus defence per se is not a defence to an offence under Sec. 33(2), partly on the basis of the 'Dilkara' case.

The cases recognize, R. v. Industrial Tankers, that Commercial enterprise have large and numerous installations which are potentially dangerous to deposit a deleterious substance in water frequented by fish and if this offence does occur then there may be a very substantial damage to the environment and the health and welfare of the community. The legislation places a very heavy onus on persons who should own or operate such installation not to commit the offence. The person must "exercise all due, dilligence to prevent" the environment damage and in a prosecution under this act it is for the person charged to prove that "all due dilligence" has been exercised, because the words of the section are "unless the accused establishes." The defences in common law to charge of strict or absolute liability are not applicable, the defence to the offence is found in the legislation. In the Fisheries Act, Sec. 33(8) is the defence to a charge under Sec. 33(2). In the Oil Pollution Prevention Regulations, Sec. 6, is the defence to a charge under Sec. 5 and Sec. 10-12 are the defences to a charge under Sec. 9.

The meaning of the word "due dilligence" means not only the acts of the person charged, their employee or agent at the time of the offence, but also "due dilligence" in the construction, maintenance and inspection of the installation. For the purpose of this case I do not need to go this far, but it may be that the person is required to prove not only that the installation was properly constructed and maintained, but that which was constructed was the best and most advanced construction possible to prevent the environmental damage. It may not be enough to say a cement retaining wall was built to prevent a gasoline spill without additionally proving that a cement wall was the best type of construction to prevent the spill.

I find the facts in this case to be that Standard Oil did construct a cement retaining wall intended to prevent a gasoline spill such as occurred here, there is no evidence as to how or exactly when the wall was built or by whom, or if the wall was properly constructed. There is no evidence as to inspection or maintenance of the wall. Culos said there was inspection by Standard Oil of the plant installation, but he did not give evidence if the wall at the point of the leak was inspected. The Fire Marshall described the flow of gasoline through a hole in the cement wall, there is no evidence as to how the hole was created. The onus was on Standard Oil to prove that they did exercise all due dilligence to prevent that hole being in the wall and thus prevent the gasoline spill, they did not discharge that onus. As a comparison, in the 'Allunga' case, the defence admitted all the evidence of the Crown except guilty and then gave a very detailed technical set of facts as to how the spill occurred.

Since I have found that Keddy was the agent of Standard Oil while operating Standard Oil machinery that caused the deposit of the gasoline into the Powell River harbour, I find Standard Oil guilty of Count 1.

Since Count 2 is a similar charge on the same facts, I find Standard Oil not guilty, Count 2.

His Honour Judge J. S. P. Johnson
Date of Judgment: January 20, A. D., 1975.

BRITISH COLUMBIA PROVINCIAL COURT

G.H. Johnson Prov. Ct. J.

Regina v. Captain J. Tindale

Environmental law -- Water pollution -- Oil dispersant -- Depositing deleterious substance in water frequented by fish -- Permitting deposit of deleterious substance in a place where it may enter water frequented by fish -- Substance lethal to fish under laboratory conditions -- Accused convicted -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(11).

The crew of a vessel of which the accused was master attempted to disperse a spill of oil from the ship by using a chemical substance. The accused was charged with one count of permitting the deposit of a deleterious substance in a place under conditions where it may enter water frequented by fish and with a second count of depositing a deleterious substance in water frequented by fish.

Held, the accused was convicted on both counts. Even though laboratory experiments which showed that the substance in question was lethal to juvenile salmon were carried out under conditions which did not duplicate those in the waters affected, they showed that the substance was deleterious. In addition, expert testimony established that the dispersant dramatically increased the toxicity of oil in water. The evidence further established that the deposits had taken place and that the waters in question were frequented by fish and therefore the essential elements of the offence had been made out.

Miss J. Maykut, for the Crown.
J.M. MacKenzie, for the accused.

April 23, 1975.

C A N A D A PROVINCE OF BRITISH COLUMBIA COUNTY OF VANCOUVER CITY OF VANCOUVER	REGINA VS CAPTAIN J. TINDALE

BEFORE: G. H. JOHNSON, PROVINCIAL JUDGE

VANCOUVER, B. C.
APRIL 23, 1975.

APPEARANCES

MISS J. MAYKUT	APPEARING FOR THE CROWN
J. M. MacKENZIE, ESQ.	APPEARING FOR THE DEFENCE
J. WAKEFIELD	COURT RECORDER
J. MURAO	TRANSCRIBER

REASONS FOR JUDGMENT

Now, in the case of Regina versus Captain J. Tindale, Captain J. Tindale was charged, Count One, that at the City of Vancouver, Province of British Columbia, on or about the 19th day of December, A.D., 1974, did unlawfully permit the deposit of a deleterious substance in a place under conditions where such deleterious substance may enter waters frequented by fish.

And, Count Two, that at the City of Vancouver, province of British Columbia, on or about the 19th day of December, A.D., 1974, did unlawfully deposit a deleterious substance in waters frequented by fish, contrary to the form of the statute in such case made and provided.

Now, I find the facts to be that on the 19th day of December, 1974, at about three-thirty o'clock in the afternoon an oil spill occurred in the area of the Seaboard Number Two Dock located in North Vancouver, in the Province of British Columbia. The ship, Rachel of Monrovia, was berthed at Seaboard Dock Number Two, and as a result of Mr. Thomas Carscadden, a Fisheries Officer, from the Environmental Protection Services of the Department of the Environment attending Seaboard Dock Number Two at approximately three-thirty p.m. on the 19th of December, 1974, and from his conversation, short though it was, from his observations of the dock and surrounding water, I'm satisfied on this evidence that the oil that was spilled into the water came from the ship, Rachel of Monrovia. The water involved in the area of Seaboard Dock Number Two is the water contained in part of Burrard Inlet. Also, from the observations of Mr. Carscadden and his evidence and the evidence of a Mr. Phillip Johnson, a longshoreman, I'm satisfied that not only did the oil come from the vent holes in the ship, Rachel of Monrovia, but also that several members of the crew attempted to shove coffee cups down the scuppers to try and plug them up. Mr. Johnson. when he saw this, placed a phone call with the result that Mr. Carscadden came upon the scene a short time later. Mr. Johnson also observed the crew members during -- dump sawdust on the deck of the ship and also saw some of the crew members dumping Ganlem from a can into the water of Burrard Inlet on the port-side of the ship, Rachel of Monrovia. From the evidence of the expert in oil dispersant, Mr. Guy Hebert, I'm satisfied on his evidence that Ganlem is an oil dispersant; it's a whitish colour and when you mix Ganlem with oil you do so to make it immersible in water. Not all dispersants do this but Ganlem does. Ganlem is a toxic dispersant and when mixed with oil increases the toxicity of the oil to a very marked degree. I'm also satisfied on the evidence of Mr. Carscadden that there are fish living throughout the waters of Burrard Inlet of various species; Lynn Creek, the Seymour River and the Indian River all flow into Burrard Inlet and the young fish known as Fry of various speciies come out of these rivers into the waters of Burrard Inlet in the early Spring of each year. Mr. Carscadden took a sample of the milky substance from the bow rail of the docket, the side of the ship, Rachel of Monrovia, and he also spotted several five gallon containers of a brilliant orange and black colour and he seized one containing some white powder. He also observed this milky white substance right up against the ship's rail and some of it on the deck of the ship while the clean-up was being effected by the crew. The milky substance was still in the water and drifting to the rear of the ship. Mr. Ronald Watts, head of the bioassay laboratory of the Environmental Protection Services located in the Pacific Environmental Institute in West Vancouver, B.C., was qualified as an expert in bioassay test on fish as to the limits to withstand toxic substances. On April the 15th, 1975, at fifteen hundred hours Mr. Watts conducted a test of the milky substance taken from the dock by Mr. Carscadden, set up another control solution. Cohoe fry were placed in the test vessel identical with the control. The temperature was regulated but Mr. Watts admitted that the temperature of eight degrees centigrade was not necessarily the temperature of the water on December the 19th, 1974, at three-thirty p.m. in the area of the Seaboard Dock

Number Two, nor was the test solution the same as the salt water near Seaboard. The test solution was checked after fifteen minutes, a half hour, one hour and two hours, for fatalities in the fish and there were none. However, on the -- I must check this date from my notes, yes, on the 17th day of April, 1975, there were five cohoes dead in the test solution and there were no deaths in the control. Mr. Watts conceded that the length of time of exposure is important in toxicity of substances. Because of the length of time between the taking of the sample of the milky solution by Mr. Carscadden and the test conducted by Mr. Watts a certain amount of detoxification would take place. The test solution was in the ratio of sixty grams of the milky substance to twenty-five thousand grams of the salt water. Mr. Watts agreed that the toxicity of a substance in the water depended to a large degree on the concentration of the substance in the water. I'm satisfied on the evidence of Mr. Watts that the deposit of Ganlem in the ratio of sixty grams of Ganlem diluted in twenty-five thousand grams of salt water renders that solution toxic to small fish, and that clearly, the presence of Ganlem in salt water in that ratio is toxic to these small fish. Mr. Carscadden did not take a sample of the milky salt water of Burrard Inlet on the port-side of the ship, Rachel of Monrovia, after the Ganlem was deposited into these waters by the crew. I'm satisfied on the evidence that four or five, five gallon cans of this oil dispersant, Ganlem, was poured over the side of the ship. Also, there is not any evidence as to what the ratio was of the Ganlem contained in the salt water on the port-side of the ship, nor was a sample of this solution taken by Mr. Carscadden at the time of the oil spill. It is clear from the following cases that the offence of depositing a deleterious substance in water frequented by fish contrary to Section 33, subsection 2 of the Fisheries Act is an offence of strict liability and mens rea is not required, (see the Queen versus Pierce Fisheries Limited 1975, CCC, 193, and Regina versus Jordon River Mines Limited, 1974, 4 Western Weekly Reports, at 337).

Section 33-11-A defines a deleterious substance:

> a) A deleterious substance means that any substance that if added to any water would degrade or alter or form part of a process of degradation or alteration to the quality of that water so that it is rendered deleterious to fish or to be used by man or fish that frequent that water, or --"

and it goes on.

Even though an actual sample of the mixture of Ganlem, salt water was not taken from the waters on the port-side of the Rachel of Monrovia, and there was not any evidence as to what ratio of Ganlem volume to the volume of the salt water at that time, nor the temperature of the water at the time of the oil spill the evidence of what happened to the small cohoe fish is outlined by Mr. Watts and his further expert testimony that the small cohoe fish were coughing, suffering from stress after being in the substance taken from the guard rail of the dock, and the further evidence of Mr. Hebert that the mixing of the oil dispersant, Ganlem, with the oil dramatically increases the toxicity of the oil. I'm satisfied that the Ganlem that was deposited in the waters of Burrard Inlet on the port-side of the ship, Rachel of Monrovia, was a deleterious substance, and that its deposit in Burrard Inlet near Seaboard Dock Number Two degraded and altered the quality of that water in the immediate vicinity of the berthed ship, Rachel of Monrovia, and that it was harmful to any fish present in that immediate area. I'm also satisfied that the Crown has established that these waters of Burrard Inlet in the area of Seaboard Dock Number Two were frequented by fish and that the contamination of the water was caused by the oil dispersant, Ganlem, being deposited in the water by some of the crew members of the ship, Rachel of Monrovia, while they were attempting to arrest an oil spill from that ship and contain and disperse the oil that was spilled into the waters of Burrard Inlet. I'm satisfied that the sample of the milky solution taken by Mr. Carscadden from the bow rail of the dock, Seaboard Number Two, was a mixture of water and Ganlem deposited there from that ship, and would have eventually entered the waters of Burrard Inlet along with the Ganlem already in the waters of that inlet and on the side of the ship, Rachel of Monrovia.

I'm satisfied on all of my findings beyond any reasonable doubt, and I find the accused guilty of both counts as charged.

G. H. JOHNSON,

Judge of the Provincial Court
of British Columbia.

I hereby certify the foregoing
to be a true and accurate report
of the evidence and proceedings
herein.

A duly sworn Court Recorder.
29/4/75 jm

NORTHWEST TERRITORIES MAGISTRATE'S COURT

Eckardt Dep. Mag.

Regina v. Canada Tungsten Mining Corporation Limited

Environmental law -- Water pollution -- Oil spill -- Permitting the deposit of a deleterious substance at a place where it entered water frequented by fish -- Strict liability offence -- Due diligence exercised only after the fact -- Accused convicted -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(8).

The accused was charged with three counts of permitting the deposit of a deleterious substance at a place where it entered water frequented by fish after fuel oil leaked from a pipeline located at its operations and entered a nearby river.

Held, the accused was convicted. The offence was one of strict liability and therefore the Crown did not need to show *mens rea*. Nor could the accused avail itself of the defence provided by s. 33(8). While the company may have done everything reasonable to remedy the problem and mitigate its effects once the offence became apparent, a consideration of its conduct prior to the events in question indicated a failure to exercise all due diligence to prevent the offence from occurring.

The Queen v. Pierce Fisheries Ltd., [1971] S.C.R. 5; *R. v. Jack Cewe Ltd.* (1975), 23 C.C.C. (2d) 237; *R. v. Churchill Copper Corporation Ltd.* (1972), 5 C.C.C. (2d) 319; *R. v. Jordan River Mines Ltd.* (1974) 4 W.W.R. 337; *R. v. Industrial Tankers Ltd.*, [1968] 4 C.C.C. 81; refd to.

Orval J.T. Troy, Q.C., for the Crown.
John A. Bourne, Q.C., for the accused.

June 27, 1975.

IN THE MAGISTRATE'S COURT OF THE NORTHWEST TERRITORIES

REGINA V. CANADA TUNGSTEN MINING CORPORATION LIMITED	REASONS FOR JUDGMENT OF HIS WORSHIP DEPUTY MAGISTRATE L.S. ECKARDT

CROWN COUNSEL: ORVAL J.T. TROY, Esq., Q.C.
DEFENCE COUNSEL: JOHN A. BOURNE, Esq., Q.C.

In this case the defendant company is charged that:

"Count 1, between the twelfth day of June, 1974 A.D., and the seventeenth day of June, 1974, A.D., at or near Tungsten, N.W.T. approximate location 61° 58' North Latitude by 128°13' 30" West Longitude did unlawfully permit the deposit of a deleterious substance at a place where it did enter water frequented by fish, contrary to Section 33(2) of the Fisheries Act.

"Count 2, between the twenty fourth day of June, 1974 A.D., and the twenty eighth day of June, 1974 A.D., at or near Tungsten, N.W.T. approximate location 61° 58' North Latitude by 128° 13' 30" West Longitude did unlawfully permit the deposit of a deleterious substance at a place where it did enter water frequented by fish, contrary to Section 33(2)

of the Fisheries Act.

"Count 3, between the second day of July, 1974, A.D., and the sixth day of July, 1974, A.D., at or near Tungsten, Northwest Territories, approximate location 61°58' North Latitude by 128°13' 30" West Longitude did unlawfully permit the deposit of a deleterious substance at a place where it did enter water frequented by fish, contrary to Section 33(2) of the Fisheries Act."

The Fisheries Act, R.S.C. 190, c. F-14, s.33(2) [re-en. R.S.C. 1970, c. 17 (1st Supp.), s.3(1)], reads as follows:

"(2) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water";

and the accused is charged with "depositing".

In view of the facts and circumstances of the instant case subsection (4) aforesaid is not applicable.

At the opening of the hearing Counsel materially assisted the Court by agreeing to and entering as Exhibits the following:

Ex. (1) - a Statement of Agreed Facts.

Ex. (2) - a book of photographs containing twenty-one photographs (lettered A to W inclusive) depicting various scenes taken at the area in question including "clean-up" operations.

Ex. (3) - a blueprint plan of the mining site in question.

The Statement of Agreed Facts (Ex. 1) contains the following 25 facts, namely:

1. The Company is the proper Defendant.

2. The situs is at or near Tungsten, Northwest Territories approximate location 61°58'N Latitude, by 128°13'30"W Longitude.

3. Between the dates June 12 to June 17, June 24 to June 28, and July 2 to July 6, A.D. 1974, the Company was the owner and operator of the Mining Company operation complete with associated buildings and equipment and particularly the oil storage tank in question located at the site described above under authority of NWT Lease No. 2457. The tank fed oil to the steam boiler, the Mine Manager's house and the recreation hall.

4. On Monday, June 10, oil was visible to the Company staff in Flat River in an area some distance below the oil storage tank in question. It was considered that the visible oil could be related to the oil storage tank and it was shut off and the tank drained. The Manager's house and recreation hall were hooked up to separate tanks and the steam boiler was moved to the power house. There was no leak in the tank itself.

5. On Tuesday, June 11 oil was still visible in the Flat River and John Kervin, Mine Manager, sent telexes to the Inspector of Mines and Controller of Water Rights in Yellowknife with a copy to F.E. Hall, President of the Company, advising of the visible oil and asking for assistance.

6. On Wednesday, June 12 John Kervin, Mine Manager, phoned Dorothy Chisholm, Company representative in North Vancouver, asking for material to contain the oil and to get advice. Dorothy Chisholm phoned B.C. Research Council which recommended she approach Environment Canada. Environment Canada suggested trench and peat moss or straw be employed and suggested John Kervin phone

Colin Wykes, Manager of Yukon Environmental Project in Whitehorse, which was done. Dorothy Chisholm arranged to expedite 40 bales of hay from Watson Lake to Tungsten and 20 bales of peat moss were despatched by truck from North Vancouver to Tungsten, N.W.T. Wishart Robson, Senior Technician of Environment Protection Service, Whitehorse, and George Leschyson, proceeded to Tungsten.

7. On Thursday, June 13 Robson and Leschyson arrived at Tungsten and conducted an inspection of the Mining property where they observed oil entering the Flat River immediately adjacent to the mining property. At the time the Company was ditching parallel to the river and bisecting areas where oil was seeping into the river to intercept the flow. Upon the advice of Mr. Robson, three booms were placed across the river to intercept or cut off the flow of oil from downstream. The Company employees were also advised by Mr. Robson to begin burning off accumulated flock from the river booms. This situation continued until June 17. The use of the straw and peat moss was not very effective. CON-WED Oil Absorber was recommended and the Company ordered it from CIL, Calgary to arrive at Watson Lake on June 14.

8. On Friday, June 14 a second trench was begun about forty feet upflow from the first and parallel to the river. The burning of oil was begun in the second trench. CON-WED Oil Absorber arrived and was deployed in the first trench and the booms.

9. On Saturday, June 15 Mr. Colin Wykes, District Manager of Environment Protection Service, Whitehorse, recommended calling in consultants from Edmonton and the Company agreed and consultants were contacted. The burning continued.

10. On Sunday, June 16 Jim McKay, Consultant, arrived and advised lining the first trench with plastic film on the stream side, which was done. The burning continued.

11. On Monday, June 17 Messrs. Robson and Leschyon left Tungsten. Kenneth Weagle, Senior Biologist, Environment Protection Service, Whitehorse, reported by telex to Dave Gee, Regional Manager, Water Forest and Lands, on the current situation and reported that the Company had been very cooperative. The burning continued.

12. On Tuesday, June 18 to Monday, June 24 the burning continued.

13. On Tuesday, June 25 Messrs. Ken Weagle, Wishart Robson and Lawrence Solsberg arrived at the Company's mine site and noted that fires were still burning in the trenches which had been dug to intercept the flow of oil. The investigators also observed a slick of oil on the river and accumulations of flock material along the river bank. A decision was made to divert the river around the affected area.

14. On Wednesday, June 26 the investigators inspected the site of the spill with Mr. Neils Jacobson, Department of Indian & Northern Affairs. The slick was observed on this day and fires were burning in one of the trenches. Flock was also observed along the banks and the booms were still in position on the river. Mr. Weagle contacted Sandy Lewis of Environment Protection Service, Yellowknife, to obtain authorization to divert the river.

15. On Thursday, June 27 Messrs. Weagle, Solsberg and Robson left Tungsten. The burning continued.

16. On Friday, June 28 Ron R. Wallace, Senior Project Biologist, telexed C. Wykes advising the diversion of the river was authorized and to advise the Company. The burning continued.

17. On Wednesday, July 3 Mr. Wishart Robson arrived at Tungsten with a letter from C. Wykes giving the Company permission to divert the river. A portion of the downstream diversion dyke had already been completed by the Company but actual diversion was being held up until formal approval was given. Mr. Robson conducted an inspection of the site. Fires were burning in the trench and a slick was noticed on the water, there was also flock accumulating in places along the banks and along the booms which were still in place.

18. On Thursday, July 4, the dyking and diversion of the river continued. The burning continued.

19. On Friday, July 5, 1974 Company personnel located a fuel pipe which had previously been leaking and which was contained in a box that had been completely closed and insulated until it was opened during this inspection. This

leaking pipe was found to be the source of the oil which was leaking into the Flat River. The pipe in question was part of a fuel distribution system which supplied heating oil to the several buildings from the aforesaid storage tank belonging to the Company. There had been no metering system or regular pressure tests in effect designed to detect any oil leakages from the tank or pipe. The dyking and diversion of the river continued. The burning continued.

20. On Saturday, July 6 the dykes and the diversion of the river were completed and flow of oil downstream was cut off and the two booms repositioned. The burning continued.

21. On Sunday, July 7 improvements to the dykes were made by lining them with plastic membrane. The burning continued.

22. On Monday, July 8 Mr. Robson left Tungsten.

23. Between the dates June 12 to June 17, June 24 to June 28 and July 2 to July 6, A.D. 1974 diesel or fuel oil which had escaped from the pipe did seep through the ground and did enter the waters of Flat River, but the Company did not consent thereto.

24. The Flat River is water frequented by fish.

25. Diesel or fuel oil is a deleterious substance.

From these agreed facts it is conceded that:

(a) The water in question, namely, the Flat River, is water frequented by fish.

(b) The deposit was a deleterious substance.

Counsel for the accused however did not concede that the offences in question are ones of strict liability requiring no mens rea and, in that regard, relied interalia on the lone dissenting Judgment of Cartright, C.J. in Regina v. Pierce Fisheries

Ltd. (1971) S.C.R. 5; a Judgment of F.K. Grimmett, C.C.J., in the unreported 1974 British Columbia case of Her Majesty the Queen v Jack Cewe Ltd. from the County Court of Westminster holden at New Westminster; and a Judgment of J.D. Ord, Prov. Ct. Judge in the unreported 1975 Ontario Provincial Court case of Regina v. Power Tank Lines Limited. In Regina v. Pierce Fisheries Ltd. (supra) the respondent company was charged with the offence of being in possession of undersized lobsters contrary to s.3(1)(b) of the Lobster Fishery Regulations. The question for determination by the Supreme Court of Canada was whether mens rea was an essential ingredient to be established by evidence on a charge of violating the said s.3(1)(b) of the Lobster Fishery Regulations. The circumstances were somewhat extenuating in that, out of 50,000 to 60,000 lbs. of lobsters found in the accused company's, possession, only 26 of them were undersized. Furthermore, it was conceded on the evidence that none of the officers or responsible employees of the company had any knowledge of that fact and indeed specific instructions had been given to its officers, responsible employees and dealers not to buy undersized lobsters. The learned Chief Justice applying the principle to the words of the charge against the respondent company that unless a statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind, was of the opinion that the respondent was entitled to a finding of not guilty. In support of his opinion the Chief Justice stressed the expressfinding of fact that the

respondent had no knowledge, factually or inferentially, that any of the lobsters on its premises and under its control were undersized, and that the regulation in question did not declare in specific and unequivocal words (as he thought it should) if it was intended to create an offence of absolute liability in the public interest.

The other eight members of the court however did not agree with the learned Chief Justice and Ritchie, J., in delivering the majority judgment (p. 14), adopted the reasoning of Wright, J. in Sherras v. De Rutgen (1895) 1 Q.B. 918 @ 921 which reads as follows:

> "There is a presumption that mens rea, an evil intention, or a knowledge of the wrongfullness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered ---------------the principle classes of exceptions may perhaps be reduced to three. One is a class of acts which, in the language of Lush, J. in Davies v. Harvey L.R. 9 Q.B. 433, are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty."

His Lordship went on to say that the Lobster Fishery Regulations were obviously intended for the purpose of protecting lobster beds from depletion and thus conserving the source of supply for an important fishing industry which is of general public interest; and concluded by saying that he was of the opinion that the offence of violating subs. (1)(b) of s.3 of the Lobster Fishery Regulations was an offence of strict liability of which mens rea is not an essential ingredient. Accordingly the appeal was allowed and the case remitted to the Provincial Magistrate to be dealt with in accordance with the majority judgment as delivered by Ritchie, J.

The other two cases mentioned aforesaid, namely, Her Majesty the Queen v. Jack Cewe Ltd., and Regina v. Power Tank Lines Limited, are both readily distinguishable from the instant case on the facts. The charge in the former case was dismissed because, in the opinion of the Court, the particular circumstances in the case amounted to an Act of God. In my opinion no such circumstances existed in the case at bar. In the latter case the accused corporation was charged with two counts under The Environmental Protection Act of Ontario, and one count under The Ontario Water Resources Act. The circumstances and the resultant charges arose out of a motor-vehicle accident in which no legal liability rested on the driver of a truck (the property of the defendant company) which was carrying 3000 gallons of bunker oil at the time. The learned Provincial Court Judge in that case held that, under the aforementioned Ontario Statutes, the Crown had no onus requiring it to prove mens rea, but queried as to whether or not this was sufficient to justify holding the defendant company to be an insurer of oil when transporting it on a highway. The court ultimately registered convictions against the defendant expressing the belief that a person or company which causes oil to be carried upon the highway must accept a certain foreseeable risk of accident no matter by whom caused.

On the issue in the instant case as to whether or not the offences in question are of strict liability requiring no mens rea, I respectfully subscribe to and adopt the reasoning of Ritchie, J., in Regina v. Pierce Fisheries Ltd. (supra)and rule that offences of violating s.33(2) of the Fisheries Act are offences of strict liability of which mens rea is not an essential ingredient.

It is noted that similar decisions have been handed down in several recent British Columbia environmental cases including Regina v. Churchill Copper Corp. Ltd. (1972) 5 C.C.C. 2nd 319; and Regina v. Jordan River Mines Ltd. (1974) 4 W.W.R. 337.

It follows that, in my opinion, the aforementioned three decisions relied upon by learned counsel for the defendant company in the case at bar do not assist him in this case.

The real issue remaining is: Has the offence been proven?; and in that regard I will now deal with ss.8 of s. 33 of the Fisheries Act which reads:

> "(8) In a prosecution for an offence under this section or section 33.4 it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission."

The underlining is my own.

Mr. Bourne, in his assiduous and persuasive argument on behalf of the accused submitted (i) that, in effect, the alleged offence should be confined to the accused's oil storage tank referred to in Exhibit (1); (ii) that the accused did not consent to the commission of the offence; (iii) that the accused used all due diligence on the days in question to prevent its commission; (iv) that the days in question, according to the Information were June 13 to 16 inclusive, June 25 to 27 inclusive, and July 3 - 5 inclusive, all in the year 1974; (v) that after June 10, 1974, the accused did not permit oil to be in the said storage tank (same having been shut off and drained on June 10, 1974); (vi) that on Monday, June 10, 1974, oil was first noticed in the Flat River by an employee of the accused and reported forthwith to the authorities; and (vii) that the accused did not permit oil to be in the ground but, on the contrary, took all possible steps to remove it from the ground and to prevent it from entering into the Flat River.

It should be noted that the said oil storage tank fed oil to the steam boiler on the mining site, the Mine Manager's house and the recreation hall by means of a pipe or pipes leading from the tank to various places on the mining site. The pipes in question (or at least some of them) including the one hereinafter particularly referred to, were contained in what appears to be a long "flume-like" box. (see Ex. 2 - photos B, V & W) - hereinafter referred to as the said "pipe box". This pipe box, hitherto completely closed and insulated, was on Friday, July 5, 1974, opened up and inspected, revealing that a fuel pipe contained in the said pipe box was found to have been leaking. This leaking pipe was found to be the source of the oil which had been leaking into the Flat River. Said pipe was part of the fuel distribution system which supplied heating oil from the aforementioned oil storage tank to the several buildings on the mining site (see Ex. 2 - photo W). On June 11th oil was still visible in the Flat River adjoining the accused's mining site. On June 13th oil was observed entering the Flat River immediately adjacent to the mining property. On June 25th and 26th oil slicks were observed on the river adjacent to the mining property and accumulations of "flock" material along the river banks. On July 3rd "flock" was seen to be accumulating in places along the banks of the Flat River.

According to the Crown witness, Mr. Wishart Robson, Senior Technologist with Environment Canada, "flock" is a name which his Department has given to a material which forms when diesel oil or fuel mixes with water (see Ex. 1 - photo C).

While Mr. Bourne's argument is indeed ingenious, I am unable to agree with his submission that the Court should only take into consideration events which occurred subsequent to June 10, 1974, in dealing with the charges in question. To agree with defence counsel's submission the Court would have

to disregard a very important part of ss. 8 of s.33of the Fisheries Act, namely, the last eleven words of the sub-section which are, "and that he exercised all due diligence to prevent its commission".
The underlining is my own.

In my opinion it is implicit in the reading of these words that, in dealing with the question of innocence or guilt in a case such as this, the court has to be concerned in what was done if anything before June 10, 1974, to prevent the commission of the alleged offences. Such is the plain and ordinary meaning of the words in question and the very essence of the case.

I have not the slightest difficulty on the facts in finding that the accused in the instant case did not exercise all due diligence to prevent the commission of the offences alleged in the Information. It follows that I find the accused guilty on all three counts.

L. S. Eckardt
(L. S. ECKARDT)
Deputy Magistrate
Northwest Territories

Yellowknife, N.W.T.
June 27, 197~~4~~5

BRITISH COLUMBIA COUNTY COURT

Catliff C.C.J.

Imperial Oil Limited and British Columbia Hydro & Power Authority

v. The Queen

Environmental law -- Water pollution -- Oil spill -- Deposit of deleterious substance in water frequented by fish -- Exercise of all due diligence by first accused -- Second accused not guilty as party to the offence -- Appeal allowed -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(8), 33(11); Interpretation Act, R.S.C. 1970, c. I-23, s. 27; Criminal Code, s. 21.

The two accused were convicted in Provincial Court on a charge of depositing a deleterious substance in water frequented by fish after an employee of Imperial Oil Limited (IOL) delivered fuel oil by mistake to an abandoned storage tank on the premises of B.C. Hydro & Power Authority (Hydro). The oil escaped from the tank, passed through the municipal sewage system, and entered Vancouver Harbour. On appeal by way of trial *de novo*,

Held, the appeal was allowed and both accused were acquitted. While the substance deposited was deleterious and the offence was one of strict liability, IOL brought itself within the defence provided by s. 33(8) of the Fisheries Act by establishing that the offence was committed without its knowledge or consent and that it exercised all due diligence to prevent it. In specific, IOL had given proper instructions to its employee, and had also done everything reasonable to prevent such incidents after a similar accident occured on Hydro's premises on a previous occasion.

Even though Hydro's employees had assisted IOL's in the act that constituted the offence, it too was acquitted. Hydro could only have been found guilty as a party, but since the assistance of its employees was merely incidental to the matter and in no sense for the purpose of furthering the offence, Hydro was not guilty.

The Queen v. Pierce Fisheries Ltd., [1971] 5 S.C.R.; *R. v. Churchill Copper Corporation Ltd.*, [1971] 4 W.W.R. 481; [1971] 5 C.C.C. (2d) 319; affd [1971] 5 C.C.C. (2d) 324; affd [1972] 8 C.C.C. (2d) 36 (B.C.C.A.); *R. v. McTaggart*, [1972] 3 W.W.R. 30; [1972] 6 C.C.C. (2d) 258; *R. v. Jordan River Mines Ltd.*,[1974] 4 W.W.R. 337; *R. v. Kirby*, unreported, B.C. Prov. Ct., May 8, 1972; *R. v. Standard Oil of B.C. Ltd.*, unreported, November 18, 1974; *R. v. F.W. Woolworth Co. Ltd.* (1974), 3 O.R. (2d) 629; refd to.

A.D. Louie, for the Crown, respondent.
Heber Suiker, for the accused Imperial Oil Limited, appellant.
R.L. Louie, for the accused British Columbia Hydro & Power Authority, appellant.

November 20, 1975.

[illegible] Carscadden.

No. C1679/74 &
No. C1799/74

DEC 09 1975

IN THE COUNTY COURT OF VANCOUVER

HOLDEN AT VANCOUVER

HER MAJESTY THE QUEEN)
)
AGAINST)
)
IMPERIAL OIL LIMITED and)
BRITISH COLUMBIA HYDRO &)
POWER AUTHORITY)

REASONS FOR JUDGMENT

OF

HIS HONOUR JUDGE CATLIFF

Counsel for Imperial Oil Limited:	Heber Suiker, Esq.
Counsel for British Columbia Hydro & Power Authority:	R.L. Louie, Esq.
Counsel for the Crown:	A.D. Louie, Esq.
Dates of Hearing:	11, 12, 15, 16, 17, 18 September 1975.

This is an appeal by way of trial de novo from a conviction of the Defendants on 2 December 1974 by His Honour Judge J.J. Anderson on a charge that the Defendants did unlawfully deposit a deleterious substance, oil, in a place under conditions where such oil entered water frequented by fish contrary to Section 33(2) of the Fisheries Act.

The charge arose out of an incident on 5 November 1973 when a large quantity of bunker fuel was delivered to the Larwell Bus Depot on Beatty Street in Vancouver. In circumstances which I shall relate the fuel was pumped in error through a fill pipe into a small abandoned underground tank from whence it spilled out through a dip pipe on to a furnace room floor. The oil then spread across the floor and into drainage sumps from where it found its way into the storm sewer on Beatty Street and was carried along the sewer until it reached the outfall in Vancouver

The fuel was delivered by an employee of the Defendant Imperial Oil Limited ("Imperial Oil") to the bus depot which are premises occupied by the Defendant British Columbia Hydro & Power Authority ("B.C. Hydro") under a lease and operated by a subsidiary company. There are two underground fuel storage tanks at the bus depot. The first has a capacity of about five hundred gallons and has not been in use for many years. The second, which is in every-day use, has a capacity of two thousand gallons. Both tanks are filled by means of pipes which exit at ground level about two feet from the north wall of the bus garage. The fill pipe of the abandoned tank is two and a half inches in diameter and projects some few inches out of the ground. The fill pipe for the tank in use is about four inches in diameter and exits at ground level about six inches from the other fill pipe. On 5 November 1973 the fill pipe to the abandoned tank had been fitted with a bung cap and spot welded. The fill pipe in use was capped with a circular brass plate containing a depressed slot in its top surface by means of which the cap could be screwed loose. The words "automatic" were engraved in a semi-circle around the perimeter of the brass cap. The brass cap was set slightly below the black-topped surface of the area.

At about 9:45 p.m. on 5 November 1973 the delivery man, a Mr. Donoghue arrived by truck at the bus depot to make a delivery of some two thousand gallons of bunker fuel known as Fuel 46. Donoghue had been working for Imperial Oil for only a short time and was making his first delivery to these premises. He saw a sign on a wall which said "46 Fuel". He saw the old fill pipe projecting from the black right one and he roamed around. He said he could not see any other fill cap. He went back to his truck and looked at his delivery card.

Each delivery man is supplied by Imperial Oil with a card in respect of each of the premises he visits. The card contains a variety of information including a space for special delivery instructions. Donoghue's delivery card (Exhibit #7) contained the following special delivery instructions:

> "Inter-Bus route)(Del. near gauge
> East of wash rack door 4½ ft.
> the far fill cap 0 Brass one -
>
> CONTACT DEPOT MASTER
> BEFORE DEL."

In addition to these special delivery instructions, Exhibit #7 contained a rough sketch of the garage building including the location of the wash rack and the apparent location of the brass cap which is marked on the sketch by a circle with a line in the middle of it and the words "oil fill".

After looking at his card, which Donoghue remembered showed a "brass one", he went outside to look again, but could still see only the old fill pipe with its bung cap. He said he was still not convinced and so returned to his truck to call the dispatcher at the Imperial Oil office. At the time the dispatcher received the call there was sitting not too far away from him his supervisor, Mr. Cleaver, who heard Donoghue's call over a speaker. Donoghue told his dispatcher that he was not sure that the fill pipe he had located was the right one and pointed out that it had a small cap. In his evidence,

Mr. Cleaver said that he advised the dispatcher to tell Donoghue to check his delivery card and find someone at the depot who knew where the right cap was. Mr. Cleaver also said he told the dispatcher to tell Donoghue that the fill cap might be in the neighbourhood of the garbage cans.

Donoghue had apparently looked under the garbage containers, but had found nothing there. He said that there were also some tires three or four feet from the old fill cap and he removed these tires but found nothing underneath.

Donoghue then made enquiries from a boy who was nearby washing buses. The boy referred him to a mechanic in the garage. The mechanic came out of the garage and pointing in the general vicinity of the old fill pipe told Donoghue "this is where we've been filling for years". Apparently this convinced Donoghue that the fill pipe he could see was the right one so he returned to his truck to get wrenches to take the bung top off. With these tools he tried to remove the bung cap but could not do so. He then asked the boy washing buses if he could give him some tools. The boy referred Donoghue to a Mr. Hargreaves who was a mechanic and leading hand in the garage and, in fact, the senior employee on duty in the garage that evening. (It is not clear from the evidence whether Hargreaves was the mechanic Donoghue first spoke to. Hargreaves denies it.) Hargreaves gave Donoghue a special tool designed to remove bung caps, but Donoghue was again unsuccessful and returned to Hargreaves and told him he could not get it off. Hargreaves got a hammer and chisel and came outside with Donoghue and tried to take the bung cap off with these tools. Hargreaves was unsuccessful and returned to the garage. Donoghue took up the hammer and chisel or used his own hammer and chisel - the evidence is not clear - and was able to collapse the cap and extract it. Having opened the old fill pipe Donoghue was then able with the help of an adaptor to connect up to his truck and proceeded to deliver 2000 gallons of oil at a rate of between 80 and 100 gallons a minute into the old fill pipe. After he had finished and was ready to disconnect the boy came out and said he could smell oil in the basement. Donoghue went down to the basement and saw that the floor was covered with oil. He returned to his truck and called his dispatcher who advised him to take precautions against fire. Donoghue then returned to the basement and opened the door into the boiler room. He saw oil guzzling up from a hole in the boiler room floor and flowing towards and down a drain near the wall. At this time the furnace in the boiler room was alight and Donoghue did what he could to prevent the oil on the floor from getting into the furnace, Sometime later Donoghue returned to the area of the fill pipe and was shown the brass cap by a B.C. Hydro employee Mr. Peterson. Donoghue said he had looked in the same area a half dozen to a dozen times but had not seen it. It was clearly visible when Mr. Peterson showed him it and he could only suggest that the fact that it was slightly recessed must have obscured it or that it had been covered up by something.

It is to be remembered that the brass cap was only some six inches away from the old fill pipe and in my view must indeed have been covered up in some way before Donoghue made his delivery. It is almost inconceivable to

me that Donoghue and Hargreaves while working on the bung cap some six inches away would not have seen the brass cap unless it had been covered up. There was some inconclusive evidence about debris in the area and evidence that the garage roof had recently been repaired and that old bits of asphalt and tar were lying around. This evidence does not satisfy me as to how the brass cap was covered up, but, as I say, I am satisfied that it must have been camouflaged in some manner because otherwise Donoghue and Hargreaves would surely have noticed it.

The evidence showed that a pipe to enable a dipstick to measure the oil in the old tank (called at trial a dip pipe) ran from the tank and emerged at floor level in the basement furnace room.

It is to be inferred from the evidence that the bunker fuel delivered by Donoghue after filling the abandoned tank was then forced up this dip pipe and bursting through the cap at the top of the pipe overflowed on to the boiler room floor. The evidence suggests that there may already have been a substantial quantity of fuel in the abandoned tank.

There had been an incident in April 1973 concerning the abandoned tank when another Imperial Oil delivery man had also connected up to the wrong fill pipe and had started pumping fuel into the old tank. On this occasion the fuel in excess of the old tank's capacity had not been able to escape via the dip pipe because the bung in it had held. As a result the delivery man had noticed a reversal of pressure at the fill pipe entrance and had immediately stopped delivering. There was no evidence as to how this earlier mistake had come about. There was evidence that the mistake had not been discovered until a day or so later when the furnace ran out of oil and it was then deduced that delivery had been made to the wrong tank. A discussion had followed between representatives of B.C. Hydro and Imperial Oil with the latter suggesting that steps be taken by Hydro to see that the possibility of a fuel delivery to the wrong tank could not happen again. A B.C. Hydro official had then instructed an employee to spot weld the bung cap on to the old fill pipe. This had been done but the fill pipe was otherwise left as it had been. No steps had apparently been taken to remove the oil which had been pumped into the abandoned tank in April and it was therefore presumably still there on 5 November 1973.

If the dip pipe bung had held when the old tank became filled Donoghue might well have been made aware that something was wrong as had happened on the previous occasion. Instead the bung apparently gave way. The evidence of the Imperial Oil employee, Mr. Areano, who was in thefurnace room shortly after the first incident in April, was that the bung he had found being used to plug the dip pipe in the furnace room floor was a poorly fitting rough wooden plug with a rag around it. After Arcano had dipped the tank he had replaced the plug by screwing it finger tight and then stamping on it with his foot.

Having emerged from the dip pipe and on to the floor of the furnace room, the fuel oil spread across the room and into a sump and also under the furnace room door

and into another sump nearby. Once in the bus depot drains the oil proceeded into the regular sewer on Beatty Street. This sewer takes the storm and sanitary flow from a large area of downtown Vancouver. It starts at Beatty Street and leads north to its outfall underneath the Ocean Wharves Dock in Vancouver Harbour.

When noticed by the Harbours Board Police, the oil emerging from the outfall had spread some two hundred feet out from the Ocean Wharves pier and along its length for some five hundred feet. This oil slick when seen was spreading slowly. A sample was taken of the oil which proved to be Bunker Fuel 46.

On the basis of these facts the Defendants were charged with an offence under Section 33(2) of the Fisheries Act, R.S.C. 1952, c. 119, as amended ("the Act") which provides as follows:

> "(2) ...no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water."

On behalf of Imperial Oil it was submited that:

(1) The Crown had not proved the deposit of a deleterious substance;

(2) The offence was not one of strict liability and required proof of mens rea;

(3) Imperial Oil had established thedefence of due diligence under Section 33(8) of the Act.

On behalf of B.C. Hydro it was submitted (in addition to (1) and (2) above) that:

(4) The Crown had not proved a "deposit" of oil;

(5) B.C. Hydro could only be guilty if at all as a "party" offender under Section 21 of the Criminal Code but the conviction of a party offender to an offence of strict liability nevertheless required proof of mens rea of which there was none;

(6) B.C. Hydro is immune from prosecution as an agent of the Crown;

(7) B.C. Hydro had established the defence of due diligence under Section 33(8) of the Act.

I shall deal with these submissions in turn.

(1) Has the Crown proved the deposit of a deleterious substance?

Section 33(11) of the Act defines "deleterious substance" (inter alia) as:

> "(a) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that itis rendered deleterious to fish or to the use by man of fish that frequent that water, ..."

The Crown satisfied me by evidence of laboratory experiments that Fuel 46 if added to water degrades that water so that it is rendered deleterious to fish that frequent that water. It was submitted that the water referred to in Section 33(11) is water frequented by fish and that the water used by the Crown in its laboratory experiments with fish was not water frequented by fish. The Crown's evidence, however, was that the water used in the experiments was taken from Burrard Inlet at a point offshore from West Vancouver, sixty feet below lowest tide and three hundred feet from the shore. It was

conceded during the trial that Burrard Inlet is a body of water frequented by fish. The water used in the Crown's laboratory experiments designed to test the effect of Fuel 46 was therefore water frequented by fish.

Mr. Suiker also submitted that as there was no evidence, or no sufficient evidence, that the oil seen on the water by the Harbours Board Police on 6 November 1973 at Columbia Wharf had degraded the water in Burrard Inlet I should find that the Crown had not proved a deposit of a deleterious substance. He points out for example that no evidence was adduced by the Crown to show the effect on the bunker fuel of its journey through the sewer from Beatty Street to the harbour at the end of which it might have become innocuous to fish. The point as I understand it is that the words "that water" in Section 33(11) have reference only to the water alleged to be degraded at the actual site of the spill. I do not consider that the words "that water" are to be so construed. In my view they refer to the words "any water" earlier in the subsection. The words "any water" would include the water at the site of a spill, but are clearly not limited to it. The only qualification to be attached to the words "any water" is that such water must be proved to be frequented by fish. As I say, the water used by the Crown's expert in his experiments was water taken from Burrard Inlet which is water admittedly frequented by fish.

(2) Whether an offence under Section 33(2) of the Fisheries Act is one of strict liability.

Mr. Suiker submitted that the common law presumption that mens rea was an essential ingredient in the proof of a criminal offence was not displaced in this case. He submitted that in Section 33(2) a new crime was added to our criminal law casting a stigma upon anyone convicted of it and that therefore proof of mens rea was essential. I was referred to The Queen v. Pierce Fisheries Limited (1971) S.C.R. 5 where the Supreme Court of Canada dealt with the necessity of proof of mens rea in an offence of being in possession of lobsters of a length less than that specified in the schedule contrary to Section 3(1)(b) of the Lobster Fishery Regulations made pursuant to Section 34 of the Fisheries Act. At pages 13 and 14 Mr. Justice Ritchie observes:

> "Generally speaking, there is a presumption at common law that mens rea is an essential ingredient of all cases that are criminal in the true sense, but a consideration of a considerable body of case law on the subject satisfies me that there is a wide category of offences created by statutes enacted for the regulation of individual conduct in the interests of health, convenience, safety and the general welfare of the public which are not subject to any such presumption. Whether the presumption arises in the latter type of cases is dependent upon the words of the statute creating the offence and the subject-matter with which it deals.
>
> . . .
>
> The case most frequently cited as illustrating the limits of the presumption that mens rea is an essential ingredient in all offences and the exceptions to it, is Sherras v. De Rutzen((1895) 1 Q.B. 918), where Wright J. said, at p. 921:
>
> > There is a presumption that mens rea, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered...
>
> The learned judge then went on to say:
>
> > ...the principal classes of exceptions may perhaps be reduced to three. One is a class of acts which, in the language of Lush J. in Davies v. Harvey, L.R. 9 Q.B. 433, are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty."

At page 17 Mr. Justice Ritchie concludes:

> "In view of the above, it will be seen that I am of opinion that the offence created by s. 3(1)(b) of the Regulations falls within the first class of exceptions referred to by Wright J. in Sherras v. De Rutzen, supra, and that it should be construed in accordance with the language in which it was enacted, free from any presumption as to the requirement of mens rea.
>
> In considering the language of Regulation 3(1)(b) it is significant, though not conclusive, that it contains no such words as "knowingly", "wilfully", "with intent" or "without lawful excuse", whereas such words occur in a number of sections of the Fisheries Act itself which create offences for which mens rea is made an essential ingredient."

In my view Section 33(2) of the Act should for the same reasons be construed free from any presumption as to the requirement of mens rea. Section 33(2) is in form an absolute prohibition and free of the words referred to by Ritchie, J. which occur in other sections of the Act. The offence charged falls in my view within the class of acts "which are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty".

I am fortified in my view by the following decisions in all of which it has been held that the offence under Section 33(2) of the Act is one of strict liability. R. v. Churchill Copper Corporation Ltd. (1971) 4 W.W.R. 481; 5 C.C.C. (2d) 319; affirmed 5 C.C.C. (2d) 324 n; affirmed 8 C.C.C. (2d) 36 B.C.C.A.; R. v. McTaggart (1972) 3 W.W.R. 30; 6 C.C.C. (2d) 258 (B.C.); R. v. Jordan River Mines Ltd. (1974) 4 W.W.R. 337 and R. v. Turby and R. v. Standard Oils of B.C. Ltd. unreported decisions dated respectively 8 May 1972 and 18 November 1974 of Provincial Court Judge J.F.T. Johnson (the former being confirmed on appeal under File 1072/72).

(3) Has Imperial Oil established a defence of due diligence?

Section 33(8) of the Act provides:

> "In a prosecution for an offence under this section ... it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission."

It was not disputed at trial that if an offence was committed under Section 33(2) it was committed by Donoghue, an employee of Imperial Oil, without the knowledge or consent of Imperial Oil. The real issue was whether Imperial Oil had established that it had exercised all due diligence to prevent its commission.

Crown Counsel submitted that Imperial Oil was remiss in three respects.

It was first suggested that Imperial Oil should have done something more after the first incident in April 1973 than ask B.C. Hydro to do something about the abandoned fill pipe. Mr. Cleaver of Imperial Oil said that after the first incident he asked Mr. Peterson to do something about the pipe and Mr. Peterson said he would. Mr. Cleaver also said that a week later after another delivery of oil the driver had reported to him that the fill pipe was welded shut. Crown Counsel suggests that Cleaver should have

insisted on something more before done, but there was no evidence that even if Cleaver had suggested that welding the bung cap to the old pipe was insufficient B.C. Hydro would have taken any further steps in the matter. B.C. Hydro were of course in control of their premises and in my view Mr. Cleaver did all that was required after the first incident by discussing the problem with Peterson and satisfying himself that the problem had been taken care of in the way it had.

It was next submitted that the delivery card should have made it clear that there were two pipes. In my view the delivery card did make this clear by making reference to "the far fill cap" and describing it as a brass one with a diagram of its surface appearance.

Finally it was suggested Mr. Cleaver did not exercise due diligence when he failed to tell Donoghue when Donoghue telephoned the dispatcher that there were two delivery pipes. Mr. Cleaver, as I have said, did tell Donoghue that he should look at his delivery card and find someone at the depot who knew where the right fill cap was.

It is true of course that Cleaver was aware of the delivery to the wrong tank some six months before and might have told Donoghue specifically that there were two pipes. However, he was aware that the old fill pipe had been welded shut and could quite properly have assumed in my view that the problem Donoghue was having in locating the brass cap would be solved once he referred again to his card and consulted someone at the garage. This of course is what he advised Donoghue to do. There was no evidence that Cleaver had the slightest suspicion Donoghue would break open the old fill pipe or that an employee of B.C. Hydro would help him do it. Nor do I think it reasonable to suppose that Cleaver should have foreseen the possibility of Donoghue breaking open the oil fill pipe cap particularly as he had been told it had been welded on.

I am satisfied that Imperial Oil made every reasonable effort once the accident had been discovered to clean up the oil, to alert the authorities and to do what was necessary to minimise possible damage. In my view Imperial Oil has established that the offence was committed without its knowledge or consent and that it exercised all due diligence to prevent its commission. Having established the statutory defence under Section 33(8) of the Act Imperial Oil is entitled to be acquitted.

(4) Has the Crown proved a "deposit" of oil by B.C. Hydro?

In my view, B.C. Hydro can only be convicted, if at all, as a "party" to the offence charged. To convict B.C. Hydro as a principal offender would require proof that B.C. Hydro did itself "deposit" the offending oil. The chain of events which resulted in the oil emerging into the waters of Vancouver Harbour started with the delivery of oil into the wrong fill pipe. In my view this was the "deposit" referred to in the charge and this deposit was made by Imperial Oil. I do not regard the emergence of the oil from the dip pipe on to the furnace room floor and its flow across the floor into the sumps and thence into the sewer system as a "deposit" by B.C. Hydro. "Deposit" is defined in the Shorter Oxford English Dictionary to mean (inter alia) "to lay, put, or set down". I do not consider these definitions appropriate to describe the participation of B.C. Hydro in this incident. It is to be borne in mind that B.C. Hydro were not charged with "permitting" a deposit in which case different considerations would have applied.

(5) Does a conviction of a "party" offender to an offence of strict liability require proof of mens rea?

Section 21(1) of the Criminal Code which is made applicable to this offence under Section 27 of the Interpretation Act, R.S.C. 1970, c. 1-23, provides that:

> "(1) Every one is a party to an offence who
> (a) actually commits it,
> (b) does or omits to do anything for the purpose of aiding any person to commit it, or
> (c) abets any person in committing it."

In my view the evidence that Mr. Hargreaves assisted Donoghue in removing the welded bung cap and the evidence with regard to the inadequate dip pipe cap is evidence from which I could conclude that B.C. Hydro is a party to this offence under Section 21(1)(b) if I were to apply the same principle of strict liability to a party offender and I have concluded I should apply to the offence itself.

Counsel for B.C. Hydro submits, however, that the Crown must prove mens rea as an essential ingredient and has referred me to the case of R. v. F.W. Woolworth Co. Ltd. (1974) 3 O.R. (2d) 629. The facts in brief of this case are that the accused's store manager (Fawcett) rented a counter and floor space to a salesman (Healey) so that he could demonstrate and sell pens during store hours. Healey employed a man called McPhee to do the actual demonstrating and selling. McPhee made false representations to the public about the price of the pens contrary to the Combines Investigation Act. Healey was the author of the representations

Fawcett had no control over the manner of the demonstrations and gave no prior consideration or approval to the false representations.

The Ontario Court of Appeal held that there was evidence to support a conviction of Healey and McPhee: the question was had the Crown properly connected the accused F.W. Woolworth Co. Ltd. ("Woolworth") with the false representations. After deciding that Woolworth could not be vicariously liable for the acts of Healey and McPhee the Court considered whether Woolworth was guilty as a party under Section 21 of the Criminal Code because it had done or omitted to do something for the purpose of aiding Healey and McPhee commit the substantive offence. At page 637 Kelly, J.A. said:

> "As has been stated by Lord Reid in Sweet v. Parsley, (1970) A.C. 132, there is a presumption that mens rea is an essential element of every offence unless some reason can be found for holding that it is not necessarily so; when Parliament has chosen to create an offence of absolute liability the Courts must carry out its will but only to the extent that Parliament's intention to displace the presumption is clearly stated. In enacting s. 33 Parliament had the option of including in the Act provisions extending culpability for the infraction of the section to those other than the actual perpetrators in which even the Courts would have been called upon to interpret the scope of the words used by Parliament to convey its intention. However, instead of so doing Parliament has chosen to rely upon the extension by s. 21 imported into any offence created by statute."

After quoting Sec. 21 of the Criminal Code Kelly, J.A. continues on page 638:

> "There are two principal reasons for holding that Woolworth was not a party to the offence charged:
>
> 1. Even with respect to offences of strict liability the alleged aider must know that he is aiding. Although it is not necessary

> that it be proven that he knew that the conduct he is aiding constitutes an offence it is necessary that the accused be proven at least to have known the circumstances necessary to constitute the offence he is accused of aiding."

At page 639 Kelly, J.A. concludes:

> "... I am of the view that, it not having been shown that Woolworth had knowledge of the facts which constituted the offence, it could not be convicted as an aider by the application of s. 21. I use knowledge in this connection as actual knowledge as defined by Devlin, J., (in Roper v. Taylor's Central Garages (Exeter), Ltd., (1951) 2 T.L.R. 284) that is, actual knowledge or deliberate ignorance which is the equivalent of actual knowledge.
>
> 2. There is another reason why I am of the opinion that the convictions cannot stand. Section 21 requires that an alleged party must do or omit to do something for the purpose of aiding the principal to commit the offence. That purpose must be the purpose of the one sought to be made a party to the offence (Sweet v. Parsley (1970) A.C. 132) but if what is done incidentally and innocently assists in the commission of an offence that is not enough to involve the alleged party whose purpose was not that of furthering the perpetration of the offence."

The present offence alleges a deposit of fuel oil in a place under conditions where such oil entered water frequented by fish. The essential facts which constitute that offence are in my view (a) the deposit of oil in the abandoned tank; (b) its escape through the dip pipe on to the furnace room floor; and (c) its further escape through drains into the sewer and thence to Vancouver Harbour. There is no evidence that B.C. Hydro had knowledge of these facts in the sense referred to by Kelly, J.A. It is true that Hargreaves assisted Donoghue to gain entry to a fill pipe, but there is no evidence that Hargreaves knew this fill pipe led to the small abandoned tank. Furthermore, it seems clear to me that whatever aid employees at B.C. Hydro gave to Donoghue in committing the offence such aid was given incidentally and innocently and in no sense for the purpose of aiding him to commit it.

For the foregoing reasons I conclude that B.C. Hydro cannot be considered a party to this offence and must, therefore, be acquitted of it. Accordingly I need not deal with the further submissions made by Counsel for B.C. Hydro.

In the result I allow the appeals of the Defendants and find each of them to be not guilty of the offence with which they are charged.

Michael I. Catliff,
C.C.J.

VANCOUVER, BRITISH COLUMBIA,
20 November 1975.

NORTHWEST TERRITORIES

SUPREME COURT (Yellowknife 1354-C)

Morrow J. 5th March 1976

Canada Tungsten Mining Corporation Limited v. The Queen

Fisheries — Pollution — Fuel pipe from storage tank leaking oil into river — Mens rea not essential — No method of testing pipe — No due diligence to prevent leak — The Fisheries Act, R.S.C. 1970, c. F-14, s. 33(2), (8), as re-enacted by R.S.C. 1970, c. 17 (1st Supp.), s. 3.

The appellant was convicted on three counts of unlawfully permitting oil to enter a stream frequented by fish contrary to s. 33(2) when oil had escaped from a fuel pipe carrying oil from a storage tank. There had been no metering system or regular pressure tests to detect leaking from the tank or pipe. The appellant argued under s. 33(8) that the leak had not been with its consent and knowledge and therefore it was not liable. *Held*, s. 33(2) created an absolute liability and the absence of mens rea was no defence; s. 33(8) applied only to a situation of vicarious liability. The appellant's efforts to locate and stop the leak, and to clean up the damage, while laudable, were after the event and did not affect liability, particularly as the appellant had not used due "diligence to prevent" the leak. *Monkman v. The Queen*, [1972] 3 W.W.R. 686, 7 C.C.C. (2d) 77 (N.W.T.); *Regina v. Kenaston Drilling (Arctic) Ltd.* (1973), 12 C.C.C. (2d) 383, 41 D.L.R. (3d) 252 (N.W.T.) referred to. *Regina v. Jordan River Mines Ltd.*, [1974] 4 W.W.R. 337 (B.C.); *Sweet v. Parsley*, [1970] A.C. 132, [1969] 1 All E.R. 347 applied.

J. A. Bourne, Q.C., for appellant.

O. J. T. Troy, Q.C., for the Crown. (12 pp.)

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

CANADA TUNGSTEN MINING CORPORATION LIMITED,

Appellant

and

HER MAJESTY THE QUEEN,

Respondent

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE W. G. MORROW

This matter came on before me as an appeal *de novo* from both conviction and sentence. Deputy Magistrate L. S. Eckardt on June 27th 1975 found the appellant guilty on three counts and imposed a total of $10,000.00 in fines. On the appeal before me the evidence placed before the learned Magistrate was by agreement filed as a transcript and exhibit.

Because of the nature of the argument presented to me the wording of each count is produced below:

> "Count 1. between the twelfth day of June, 1974 AD, and the seventeenth day of June, 1974 AD, at or near Tungsten, NWT approximate location 61°58' North Latitude by 128°13'30" West Longitude did unlawfully permit the deposit of a deleterious substance at a place where it did enter water frequented by fish, contrary to Section 33 (2) of the Fisheries Act.
>
> Count 2. between the twenty fourth day of June, 1974 AD, and the twenty eighth day of June, 1974 AD, at or near Tungsten, NWT approximate location 61°58' North Latitude by 128°13'30" West Longitude did unlawfully permit the deposit of a

> " deleterious substance at a place where it did enter water frequented by fish, contrary to Section 33 (2) of the Fisheries Act.
>
> Count 3. between the second day of July, 1974 AD and the sixth day of July, 1974 AD, at or near Tungsten, Northwest Territories approximate location 61°58' North Latitude by 128°13'30" West Longitude did unlawfully permit the deposit of a deleterious substance at a place where it did enter water frequented by fish, contrary to Section 33 (2) of the Fisheries Act."

The evidence is for the most part agreed upon. In fact most of it is made up of an agreed statement of facts coupled with oral evidence directed mainly to explaining the many coloured photos which purport to portray an almost daily situation found at the site.

At all pertinent times the appellant was owner and operator of a mining operation located at 61°58' North Latitude by 128°13'30" West Longitude. (Just to the east of the Yukon-Northwest Territorial Boundary in the Mackenzie Mountains and adjacent to the Flat River). The appellant's operation included an assembly of buildings, equipment, and in particular an oil storage tank. The site is held under N.W.T. lease No. 2457. It is agreed that the tank fed oil to the steam boiler, the Mine Manager's house and the recreation hall.

On June 10, 1974, oil was visible to the appellant in the Flat River in an area some distance below the oil storage tank. Thinking the visible oil was related to the tank the tank was turned off and drained. There was no leak in the tank itself. The next day, June 11 oil was still visible in the river so the Mine Manager sent telex messages to the President of the appellant company and to the Inspector of Mines and Controller of Water Rights (at Yellowknife).

From this time on while several dates must be referred to, it can be taken that, certainly, following June 12 appellant's representatives were busy trying to clean up the problem as well as ascertain the source of the oil.

On the 12th of June Environment Canada was contacted and based on suggestions from this department trenching combined with peat and straw was tried. By June 13th Wishart Robson, Senior Technician of Environment Protection Service, Whitehorse had arrived to inspect the site. Efforts to stem the flow by placing booms and by burning are now resorted to. By June 17 it was apparent these efforts were not very effective so an oil absorber known as Con-Wed was ordered from Calgary. Consultants were recommended and by June 16 a Jim McKay, consultant was brought in by the appellant. Plastic film is now used to line the first trench and burning continues down through June 24.

By June 25, Ken Weagle, Senior Biologist, Environment Protection Service, Whitehorse, and others have arrived and following his inspection the decision to divert the river around the affected area was made.

Oil slick and flock is still observed by June 26th. Burning continues. Authorization to divert the river was given June 28th and the formal written authority was brought in on July 3rd. Dyking and diversion proceeded through July 4 and was completed July 6th, at which time the flow of oil downstream was cut off.

Meanwhile on July 5th appellant's personnel located a fuel pipe which had been leaking and was found to be the source of the oil leaking into the river. This pipe was part of the fuel distribution system supplying heating oil from the storage tank to several buildings. It had been completely closed and insulated until opened for the inspection. There had been no metering system or regular pressure tests in effect designed to detect any oil leakage from the tank or pipe.

It is agreed that between the dates June 12 to 17th, June 24 to 28th, and July 2 to July 6th, 1974 diesel or fuel oil which had escaped from the pipe did seep through the ground and did enter the waters of the Flat River but the company did not consent thereto.

Finally it was agreed that Flat River is water frequented by fish and that diesel or fuel oil is a deleterious substance.

The Crown's case rests on Section 33(2) of the *Fisheries Act*, 1970 R.S.C. C F-14 (as amended C. 17, 1st Supp.) to the effect:

> " (2) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance

"may enter any such water."

It is agreed that subsection (4) has no application.

Crown Counsel argues that this section creates absolute liability, that the absence of *mens rea* is no defence, and that the appellant here must bring itself under subsection (8) to gain an acquittal. One of the more recent decisions relied on for this proposition is *R. v. Jordan River Mines Ltd.*, 1974 4 W.W.R. 337. At page 339, Osler, D.J. quoting in part from *R. v. Pierce Fisheries Ltd.*, 1971 S.C.R. 5; 12 C.R.N.S. 272;1970 5 C.C.C. 193; 12 D.L.R. (3d) 591 holds:

> "In my view, the offences charged fall under that 'wide category of offences created by statutes enacted for the regulation of individual conduct in the interests of health, convenience, safety and the general welfare of the public which are not subject to the presumption that *mens rea* is an essential ingredient.'"

I am in entire agreement with this enunciation of the law and with the Crown's submission here. See also the judgment of this Court in *Monkman v. The Queen*, 1972 3 W.W.R. 686.

While counsel for the appellant did not seriously take a contrary position to the above, he did rely heavily on subsection (8), taking the position that some of the harshness of the *Pierce Fisheries* judgment has been removed by this new amendment and that on the facts his client can show itself as satisfying the "unless" portion of this new section.

Section 33(8) is to the effect:

> " (8) In a prosecution for an offence under this section or section 33.4, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission."

Appellant counsel presented many arguments but mainly he relied on two main submissions -- taking the general position that the dates specified in the charges did not represent dates where there was evidence of a breach and in any event the appellant had amply satisfied the burden put on it by Section 33(8).

The main submissions should be set forth although I may in examining them treat one or more together for convenience.

(1) On the days charged the appellant did not permit the deposit of oil in the tank -- there was no oil in the tank.

(2) On the days charged the appellant did not permit the deposit of the oil in the ground where it did enter the water.

(3) On the days charged, although the appellant had knowledge that oil was deposited in the ground where it may and did enter the water it did not consent to the deposit of the oil in the ground where it did enter into the water.

(4) On the days charged the appellant exercised all due diligence to prevent the commission of the offence.

It is quite true that the cause of the leaking of oil was found to be the faulty fuel pipe rather than the oil tank which had earlier been assumed by the appellant to be the trouble. Whether the weight and consequent pressure from the oil in the tank before it had been pumped out may have been a contributing factor or not does not in my view change things. Appellant is charged with three offences that it did "unlawfully permit the deposit of a deleterious substance at a place where it did enter water frequented by fish." The dates of the infringements chosen by the Crown are June 13, 14, 15, 16, 25, 26, and 27th and July 3, 4, and 5th. It is not for me to speculate as to why the Crown did not cover the full span from June 10, the date when the oil was first seen in the water, up to July 6th when controls became effective. On the evidence before me I am left with no alternative but to conclude that from June 10 up to July 6th a deleterious substance, namely oil, was leaking from a defective fuel pipe which formed part of the appellant's installation and plant and that that same oil was seeping through the ground and entering the waters of Flat River. Certainly it is agreed that such escape and seepage did take place on each of the dates set forth in the specific charges.

It is admitted that the appellant did not consent to this escape. This is quite true in the sense that the appellant did not willingly wish to have such a leakage take place, did not willingly open a valve or permit some similar event to take place.

If consent or the lack of consent in the above context were the full test of liability then the appellant would probably have a full defence. But surely "consent" as used here must be read in proper context. Surely it is related to the vicarious aspect of liability, and is intended as a relaxation of the strict liability which would otherwise result from the effect of Sec. 33(2) alone where before the passing of Sec. 33(8) acts of employees could be taken to bind an employer in the strictest sense.

Oil spills, leakages or seepage of the type found in the present case are all accidental. They are probably never intended: *R. v. Power Tank Lines Limited*, (unreported Prov. Judge J. D. Ord, Ontario Prov. Ct. 28 Jan. 1975). Certainly the appellant did not consent to the deposit of the oil in the ground from whence it did enter the water in the sense of willingly agreeing or hoping for such result. But to avoid liability the appellant must couple lack of consent with a behaviour or consciousness which in effect shows it was not blind to the consequences of the possibility as well as the consequent danger of a leakage such as is found in the present case.

The general approach to the problem is beautifully expressed in *Sweet v. Parsley*, (1970) A.C. 132
where Lord Diplock states at page 163:

> "Where penal provisions are of general application to the conduct of ordinary citizens in the course of their everyday life, the presumption is that the standard of care required of them in informing themselves of facts which

> "would make their conduct unlawful, is that of the familiar common law duty of care. But where the subject matter of a statute is the regulation of a particular activity involving potential danger to public health, safety, or morals, in which citizens have a choice as to whether they participate or not, the court may feel driven to infer an intention of Parliament to impose, by penal sentences, a higher duty of care on those who choose to participate and to place on them an obligation to take whatever measures may be necessary to prevent the prohibited act, without regard to those considerations of cost or business practicability which play a part in the determination of what would be required of them in order to fulfil the ordinary common law duty of care."

I must now see whether the appellant, on the agreed facts, can come within the latter portion of Sec. 33(8) namely: "that he exercised all due diligence to prevent its commission."

As I understand part of appellant counsel's submission, his client moved with alacrity to obtain hay, moss and later an absorbent material, his client commenced burning processes, trenching and finally completely changed the river course. Again here I am reminded by counsel that the charges refer to specific days and that certainly with respect to Count No. 3 the diversion of the river was perhaps delayed by the Governmental people being unable to deliver the formal approval until July 3rd. It is clear that the appellant from the first moment of discovery, and I do not have to review the facts here, acted responsibly and with alacrity. There was no attempt to hide the affair from the authorities. Rather every effort was made to consult with those responsible for the environment and to act upon their advice. In excess

of $39,000.00 was spent by the appellant before the problem was under control.

In my view, however, these efforts, laudable as they may be, go more properly to alleviate penalty, rather than affect liability. They are all after the event.

I cannot read the wording of Sec. 33(8) except to require "due care and diligence" to refer to preventing the leak not to correcting the leak or reducing the damage. It is quite true, as was argued, that to prevent the leak in the present case, to set up inspections to look for weaknesses in the installations such as are found at appellant's plant may be difficult. The fact of the matter is that no such tests appear to have ever been made since the plant was erected, and certainly no routine ever laid down for opening the packing around the offending pipes to see if erosion was taking place.

The appellant's plant is situate in a mountainous terrain, where extremes of climate are common, and where its very remoteness makes it more necessary perhaps to show care. No matter what, the primary responsibility for proper installation, repair, and maintenance as well as inspection must always rest with an appellant as is found here. There is no basis in fact or in law wherein I can find even a small effort which could be termed due "diligence to prevent."

There remains the question of fine. By Sec. 33(6) provision is made for a maximum fine of $5,000.00 per day. A total of 10 days are covered by the three counts. I have already observed that the behaviour of the appellant when the oil leakage was found should be taken into consideration. It is important as well, however, to keep in mind the deterrent effect of convictions and resultant consequences in the present type of offence. The magnitude and impersonal nature of present day industrial, mining, and similar operations makes it doubly important that the penalty not be so small as to invite breaches as to make it worth while to gamble on not being detected: *R. v. Kenaston Drilling (Arctic) Ltd.*, (1973) 12 C.C.C. (2d) 383.

The learned Deputy Magistrate levied fines of $2500.00 on Count 1, $5,000.00 on Count 2, and $2500.00 on Count 3.

I do not think that in the present case the full punitive effect of the law should apply particularly in respect to Count No. 3 where it may be that some delay in cutting off the leak resulted from the appellant waiting for a formal permit to divert the river rather than proceeding to act immediately it had word that authorization had been given.

In the result, the appeal is dismissed without costs, on Count 1 the fine shall be $1,000.00 per day or a total of $4,000.00, on Count 2 the fine shall be $1,000.00 per day or a total of $3,000.00, and on Count 3 the fine shall be $400.00 per day or a total of $1,200.00.

I am indebted to both counsel for their help in argument. Some of the many cases referred to me were: *R. v. Standard Oil Co.*

of B.C., (18 Nov. 1974, Judge J. S. P. Johnson, Prov. Ct. B.C., unreported); *R. v. Cypress Anvil Mining Corporation*, 5 Nov. 1975 Mag. D. R. O'Connor, Mag. Ct. Yukon, unreported); *R. v. Jack Cewe Ltd.* (10 Dec. 1974, Judge F. K. Grimmett, C.C.J., B.C. unreported); *R. v. Elf Oil Exploration and Production Canada Ltd.*, (30 April 1974, Ch. Mag. P. B. Parker, Mag. Ct. N.W.T. unreported); *R. v. Imperial Oil Ltd. et al*, (20 Nov. 1975, Judge M. I. Catliff, C.C.J. B.C., unreported); *R. v. MacMillan Bloedel Industries Ltd.*, (1974) 13 C.C.C. (2d) 459; *R.v. Cherokee*, 1973 3 O.R. 599; *R. v. 'M.V. Allunga'* 1974 4 W.W.R. 435; and *R. v. Kirby* (8 May 1972, Judge J. S. P. Johnson, Prov. Ct. B.C. unreported).

W. G. Morrow,

Yellowknife, N.W.T.
March 5, 1976.

Counsel:

Appellant: J. A. Bourne, Q.C.
Crown: O. J. T. Troy, Q.C.

BRITISH COLUMBIA COUNTY COURT

Cashman C.C.J.

Regina v. British Columbia Forest Products Ltd.

Environmental law -- Water pollution -- Deposit of deleterious substance in water frequented by fish -- Deleterious nature of substance not proven -- Appeal dismissed -- Acquittal upheld -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(11).

The accused was charged with depositing a deleterious substance in water frequented by fish after its employees used a chemical substance to disperse a small amount of oil from the surface of the sea adjacent to its premises on the British Columbia coast. After the charge was dismissed at trial, government officials undertook two sets of experiments to show that the substance in question was deleterious, and the Crown appealed to the County Court by way of trial *de novo*.

Held, the appeal should be dismissed. While the substance was shown to be lethal to fingerling rainbow trout in freshwater under laboratory conditions, this evidence was of no consequence as such fish never occurred in the waters in question. Moreover, the Crown had failed to relate the quantities of the substance in the experiment to those which were alleged to have been deposited. Nor did the second set of experiments assist the Crown's case, as there was a reasonable doubt that the sample of chemical which was shown to be lethal to green sea urchins in Atlantic seawater was the same material as was alleged to have been deposited. Even if it were, the Crown failed to prove that green sea urchins were indigenous to the waters affected and failed to account for the differences between Pacific and Atlantic seawater. There being no evidence at all of the effects of the substance on the marine life of the waters in question, the deleterious nature of the chemical dispersant had not been proven.

R. v. Peebles, unreported, B.C.C.A., December 3, 1970; *Wilband v. The Queen*, [1967] S.C.R. 14; *R. v. Churchill Copper Corporation Ltd.*, [1971] 4 W.W.R. 481; *The Queen v. Imperial Oil Limited and B.C. Hydro and Power Authority*, unreported, B.C. Co. Ct., November 20, 1975; refd to.

H.J. Wruck, for the Crown, appellant.
L.M. Candido, for the accused, respondent.

June 17, 1976.

IN THE COUNTY COURT OF NANAIMO

HOLDEN AT NANAIMO, B.C.

NANAIMO
JUN 17 1976
REGISTRY

NANAIMO
JUN 17
REGISTRY

BETWEEN:

REGINA

APPELLANT

AND:

BRITISH COLUMBIA FOREST PRODUCTS LTD.

RESPONDENT

REASONS FOR JUDGMENT

OF HIS HONOUR

JUDGE CASHMAN

PLACE OF TRIAL:	NANAIMO, B.C.
DATES OF TRIAL:	MAY 17, 18, 19, 20, 1976.
COUNSEL FOR THE APPELLANT:	H. J. WRUCK, ESQ.
COUNSEL FOR THE RESPONDENT:	L. M. CANDIDO, ESQ.

The Respondent Company was charged on an Information containing two counts. A trial was held before His Honour Judge Bowen-Colthurst, of the Provincial Court of British Columbia, at Duncan, British Columbia, and following the trial of this matter by Order made the 18th day of June, 1975, the learned Provincial Court Judge dismissed Count 2 of the Information which reads as follows:

> "At Crofton in the County of Nanaimo, in the Province of British Columbia, on or about the 9th day of August, A.D. 1974, did unlawfully deposit a deleterious substance in waters frequented by fish, contrary to the form of the statute in such case made and provided."

From that acquittal the Crown appeals and this matter came on by way of Trial de Novo.

This charge is laid under Section 33(2) of the Fisheries Act, Chap. F14, R.S.C., 1970, as amended by Chapters

17 (1st Supp.) Sec. 3 and now reads as follows:

> "(2). Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water."

Subsection (4) has no application to these proceedings.

At the opening of this Appeal, it was stipulated by the Crown by way of particulars, that the deleterious substance referred to in the Information is a substance known as Oilsperse 43.

To succeed on such a charge the Crown must prove that (1) a person, (2) deposited a substance, (3) in waters frequented by fish, (4) that such substance is deleterious.

In this case, the Defendant Company did deposit a substance obtained from a 45-gallon oil drum labelled Oilsperse 43 into the waters of Osborn Bay at Crofton, British Columbia, on or about August 9th, 1974.

At that time a barge moored at a dock approximately 150 ft. from shore spilled a small amount of bunker sea fuel, estimated by various witnesses at from 2-3 barrels to 5-15 barrels, into the waters of Osborn Bay. The employees of the Defendant Company, under the direction of Mr. Efford, endeavoured to contain the spill by the use of a boom measuring some 800 ft. in length around the barge and by the use of a sawdust-type material on the barge itself to prevent further escape of the fuel into the waters and by the use of a substance manufactured apparently for the express purpose of dispersing oil, labelled Oilsperse 43. This substance was at that time manufactured by a company known as DiaChem of B.C. Ltd. and is now known by the name of DiaChem Industries of Canada Ltd. which operates from a plant in Burnaby, British Columbia.

From the evidence of Mr. Polinkoff, the Chemist and a principal of the DiaChem companies and the inventor of Oilsperse 43, I have little doubt the substance manufactured in 1974 and the substance manufactured today are substantially the same.

Mr. Efford testified that he put a quantity of Oilsperse 43 into the water contained within the boom area and agitated the water by the use of a fire hose. He said that the water would be further agitated by the current running at the rate of 0.5 knots and that at that time a boom-boat was going back and forth about its regular duties which would have the effect of further agitating the water.

From the totality of the evidence, there is no doubt that the waters of Osborn Bay are in a tidal area and that when the oil spill first occurred the tide was rising.

Mr. Poliakoff said that Oilsperse 43 was then a new product on the market. The label from the drum used by Mr. Efford contained no directions for its use. That is not the case today. A five-gallon container of Oilsperse 43 purchased around March 1976 contains a label with extensive instructions for the use of that product.

Several Officers of the Crown attended at the oil spill on August 9th, 1974 and observed what was occurring at that time. Mr. Paulsen, a Marine Surveyor employed by the Canadian Coast Guard, called on behalf of the Crown, had amongst his other duties those of pollution prevention. He attended at this oil spill and he said he suggested to Mr. Efford that perhaps he should not be using this dispersant. He said Mr. Efford replied that he had used it before and that he took full responsibility. Mr. Paulsen also quite fairly said he thought that Mr. Efford was doing his best to contain the oil spill, a fact that seems amply apparent on the facts of this case.

Mr. Epp, a Fisheries Officer, also attended on August 9th, 1974. He did not obtain a sample from the drum of Oilsperse 43 used by the Defendant Company, nor did he see fit to take a sample of water from Osborn Bay either inside or outside the boom area. Not only that, but he conducted no investigation whatsoever into the marine life existing at that time in Osborn Bay. All he could say was that generally cod, salmon and some shellfish are to be found in the Straits of Georgia. Osborn Bay is located on Stuart Channel off Georgia Straits.

No one at that time conducted any investigation or experiments to determine what effect the use of Oilsperse 43 might have on the marine life of Osborn Bay.

On March 9th, 1976, following the filing of the Notice of Appeal on July 10th, 1975, Mr. Thomas Carscadden, a Fisheries Officer, who in effect is the Investigating Officer on this Appeal purchased a five-gallon can of Oilsperse 43 from DiaChem Industries of Canada and sent two jars of the contents of that five-gallon drum to Mr. Ronald Watts, a Biological Technician employed by Environment Canada, and who is the head of the Bio-Assay Laboratory at North Vancouver, British Columbia. Mr. Watts then proceeded to conduct a series of bio-assays in freshwater using fingerling trout, estimated in age at 4-5 months and measuring 1½ inches long.

To this water he added various quantities of Oilsperse 43 and observed that there were lethal results from the addition of some quantities of Oilsperse 43 to the fresh water over a period of some 96 hours.

The evidence satisfies me that the Bunker sea fuel did not remain in the waters of Osborn Bay any longer than 48 hours.

Mr. Watts was not qualified as an expert and did not attempt to give any expert opinion with respect to the various tests he conducted and no other witness for the Crown sought to explain the results of these tests or in any way equate these tests to the conditions which existed in Osborn Bay at any particular time let alone on August 9th, 1974.

It is clear from the evidence of Mr. Wells and both Dr. Alderdice and Dr. Groves, called on behalf of the Defence, that the fingerling trout used at that stage of their development are freshwater fish and are never found in saltwater.

It was the opinion of Dr. Alderdice, a biologist at the Pacific Biological Station at Nanaimo, and employed in the capacity of a marine biologist for 25 years, 23 years of which have been spent at Nanaimo, that comparing the effect of any substance on freshwater fish in freshwater and then attempting to draw some conclusions as to what might happen to fish in saltwater, was, as he put it, like comparing apples and oranges.

There was no attempt to equate or interpret or in any way explain the effect of Mr. Watts' experiments upon freshwater fish in freshwater or to equate the quantities

used by Mr. Watts in his experiments, to the quantity said by Mr. Efford to have been used by him to disperse the bunker sea fuel in Osborn Bay. I can find little assistance in the evidence of Mr. Watts.

All that can be said of Mr. Watts' experiments is that it appears that if Oilsperse 43 is added in sufficient quantities to freshwater, in static conditions, it does alter the quality of that water so that it then becomes deleterious to fingerling trout which at that stage of their development frequent freshwater. The failure of the Crown by any evidence to equate the quantities of Oilsperse 43, used by the Defendant Company on August 9th, to what one can glean from the experiments of Mr. Watts, in my view render his experiments totally useless in coming to a determination in this case, notwithstanding the view of Section 33(11)(a) of the Fisheries Act which the Crown urges upon me and which I will deal with later.

The Crown then called a Mr. Peter Wells, the head of the toxidity section of the Environment Canada Laboratory at Dartmouth, Nova Scotia. Mr. Wells holds a degree of Master of Science in Biology and is currently working on his Ph.D. He testified that he had conducted some tests using what he believed to be Oilsperse 43 in saltwater obtained from the Atlantic Ocean.

I cannot accept his evidence as to the tests he conducted using the first quantity of Oilsperse 43 he says he used because there is no evidence from which I can properly conclude that the substance he used in those tests is in fact the substance produced by DiaChem Industries Ltd. and accordingly I disregard that evidence of Mr. Wells. There is no evidence that Mr. Wells had ever seen Oilsperse 43 before that date and his evidence cannot therefore come within the type of expertise of narcotic analysis in the way referred to Regina v Peeblen an unreported decision of the British Columbia Court of Appeal on December 3, 1970 nor Kilband v The Queen (1967) S.C.R. 14, at 21.

Mr. Carscadden testified that after obtaining the five-gallon can of Oilsperse 43 from DiaChem Industries of Canada Ltd., he also took from that another two jars of the substance and forwarded it in a sealed container to the Environment of Canada Laboratory at Dartmouth, N.S. Mr. Wells says he received a box containing two jars of a liquid and one of these jars was broken when received. The other however was intact and received in a sealed condition in a box which was securely fastened. That jar however was not produced in Court and there is therefore no evidence that the jar received by Mr. Wells is one of the jars sent to him by Mr. Carscadden. There is no evidence as to the precise mode in which it was sent, but suffice it to say that it was not sent by the accepted method of registration as is commonly used where exhibits are sent for scientific analysis. The container in which this material was sent did not accompany Mr. Wells when he came to British Columbia to testify in this case which is the usual procedure in prosecutions criminal in nature.

While there are decisions of the Ontario Court of Appeal relating to the Narcotic Control Act and the Food and Drug Act to the effect that in this day and age sending exhibits by registered mail would be considered to be an appropriate way of proving continuity; nonetheless, in all of those cases and in any cases of which I am aware the substance or in some cases the container used to contain such substance sent for analysis, or in this case experimentation, is always produced in Court so that the Court may be assured that the substance has not been tampered with, or is in fact what was sent.

The Defence submits that since continuity has not been proven I should not consider the evidence of Mr. Wells as to what he did with respect to the substance said to have been sent to him and alleged to be Oilsperse 43. The Crown on the other hand submits that I am permitted to draw the inference that what was sent by Mr. Carscadden was Oilsperse 43 and that was what was used by Mr. Wells in the conduct of experiments he says he conducted using sea urchins in saltwater obtained from the Atlantic Ocean. As I have said Mr. Wells' expertise in Oilsperse 43 is not comparable to that of narcotic analysts.

In prosecutions of offences, criminal in their nature, it is incumbant upon the Crown to prove its case beyond a reasonable doubt and this applies to continuity as well as to other matters the Crown must prove.

While it seems likely that what was received by Mr. Wells was that sent by Mr. Carscadden I cannot say beyond a reasonable doubt that what was received by Mr. Wells was received in the same state in which it was forwarded by Mr. Carscadden and that being so the Crown has failed to show beyond a reasonable doubt that the substance used was Oilsperse 43.

What the Crown is inviting me to do is to place inference upon inference. Firstly I am asked to infer from the evidence of Mr. Poliakoff that the substance used and labelled Oilsperse 43 by the Defendant Company was the same substance obtained by Mr. Carscadden and alleged to have been sent to Mr. Wells. Mr. Poliakoff, when shown the label from the 45-gallon drum which came from the Defendant Company, did not seem at all sure that it was a label from a drum of Oilsperse 43 manufactured by his Company.

While I am prepared to draw the inference from his evidence and from the label itself that it must have come from his company I am not prepared to put upon that a further inference that what was obtained by Mr. Wells in the shipment which he received from Mr. Carseadden must therefore be that which was put into the water of Osborn Bay by the Defendant Company.

In any event, Mr. Wells did conduct experiments using green sea urchins in static saltwater in outdoor tanks and found that sufficient concentrations of the substance received when put into the water did have a deleterious effect upon some of the sea urchins, which he says he collected from a bay near the laboratory at Dartmouth.

Mr. Wells was invited to give an opinion and make certain calculations upon assumptions from the evidence and to apply what he learned of the effects on green sea urchins in Nova Scotia to the saltwater of Osborn Bay. He did indeed give such an opinion but later he candidly conceded in cross-examination by Mr. Candido that his calculations were quite inapplicable to the evidence specified by Counsel for the Crown.

This being so, the only conclusion one could possibly draw from the evidence of Mr. Wells is that what he put into the saltwater tanks in Dartmouth, N.S. and into which he had put green sea urchins did have a deleterious effect when placed in sufficient quantities in static saltwater upon the green sea urchins which he used in his experiments.

Mr. Wells was asked if green sea urchins exist in the Straits of Georgia. While he was able to determine what other colours of sea urchins exist in the Straits of Georgia he was not able, except by reading a paper from an author whose qualifications were not disclosed to this Court to determine whether green sea urchins do exist in the Straits of Georgia. Dr. Alderdice said that he did not know whether green sea urchins existed in Osborn Bay. When asked to comment upon the tests conducted by Mr. Wells, he said he couldn't see that those tests could have application. He said it was simply a matter of doing a more appropriate test and in his opinion the only valid test to determine the effect on marine life, of any substance, would be to attempt in some way to duplicate the conditions which exist in the body of water under consideration and that to do otherwise might lead to erroneous conclusions.

Dr. Groves, a witness called on behalf of the defence, while not primarily a marine biologist as was Dr. Alderdice, nonetheless gave useful testimony as to the effect of tides and currents and from his evidence I have no doubt that both of these phenomena must have a diluting effect upon any substance put into tidal waters.

There is no evidence as to what happens to Oilsperse 43 once it is put upon the water. There is no evidence as to whether it remains at the top of the water or whether it sinks to the bottom of the water or whether it mixes in the water or just exactly what does happen when it is put into the water. Indeed, the only direct evidence as to the effect of Oilsperse 43 was that given by Mr, Poliakoff, a Crown witness, who said that it was his view that when Oilsperse 43 was used under proper supervision it represented one of the more environmentally safe methods of cleaning up oil spills. He said that only a constant concentration of Oilsperse 43 over a long period in seawater might be toxic to fish and in saying that he included moving seawater. He did say however that he thought the amount of Oilsperse 43 said to be used by Mr. Efford was more than he would have liked to have seen used in the circumstances. He conceded that at that time no instructions were placed upon the product as to how it was to be used, which is not the case today. The label on the five-gallon drum purchased by Mr. Carscadden contains extensive instructions as to its use. My understanding of Mr. Poliakoff's evidence was that when Oilsperse 43 is used it breaks up the bunker sea fuel and prevents it from joining together so that it will sink to the bottom. From that evidence I conclude that Oilsperse 43 always remains on the surface of the water. If that is so there is no evidence as to the effect on fish or other marine life.

It is beyond question that the Fisheries Act is a statute designed to protect the environment of Canada and imposes strict liability upon those who violate its provisions.

In my view mens rea does not apply to a prosecution under Sec. 33(2) of the statute and indeed that is conceded by Counsel for the Respndent.

There is no need to specify the reasons for that conclusion. I simply adopt what was said by the majority Judgment of the Supreme Court of Canada in The Queen v Pierce Fisheries Ltd. (1970) 12 D.L.R. (3d) 591 and more recently by Arkell, D.C.J. of the British Columbia Provincial Court in Regina v Churchill Copper Corp. Ltd. (1971) 4 W.W.R. 481, a case which concerned the same section. I agree with the conclusions of the learned Provincial Judge with respect to what he there had to say on the subject of mens rea.

In the circumstances of this case I have no hesitation in saying that if mens rea did apply I would

acquit the Respondent company because I am satisfied beyond any doubt whatsoever that what the Respondent's employees did was to attempt to clean up an oil spill by use of a product commercially manufactured, presumably under the laws of this country, to attain such ends. In my view, the Respondent Company did what any good citizen would be expected to do and that is to minimize the effect of the pollutant sea oil that escaped from the barge into the water.

It is hardly surprising that the Defendant Company through their counsel takes the position that in these circumstances the company in effect acted as a good samaritan and raises strong objections to its prosecution by those charged with the duty of protecting the environment of this country and whom one would hope would be concerned to educate not only the Respondent but all citizens of Canada as to the appropriate steps to take in such situations.

Indeed it appears from the evidence of Mr. Wells that little is done by this Department of our Government to educate those who might become involved by accident or otherwise is oil spills, a situation one can only hope will be shortly rectified.

There can be no doubt that on the day and at the place in question the Defendant Company did deposit a substance into the waters of Osborn Bay and Osborn Bay contains waters frequented by fish.

The real question is whether the substance deposited into the waters of Osborn Bay, adjacent to Stuart Channel and the Straits of Georgia and within the coastal waters of British Columbia, is a substance deleterious to fish that frequent those waters.

It would be possible to conclude from the unexplained evidence of Mr. Watts' experiments that Oilsperse 43 may well have a deleterious effect upon freshwater fish in fresh water in static conditons.

I turn now to consider the definition of deleterious substance as contained in subsection (11) of section 33. The Crown submits and it is obvious from reading the section, that only subparagraph (a) of subsection 11 could apply to the circumstances of this case. That subsection reads:

> "(11). For the purpose of this section...
> "deleterious substance" means
> (a) any substance that if added to any water would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered deleterious to fish or to the use by man of fish that frequent that water,..."

The Crown's contention in this regard put in its simplest terms is that on a prosecution in a case of this nature all the Crown need do is show that if a substance is added to any water and if it is proven that substance is deleterious to fish in that water, then without more the Crown has shown that such substance is deleterious to fish in all other waters.

The Crown says that to come to that conclusion one should apply section 11 of the Interpretation Act, Chap. I-23, R.S.C. 1970 which reads as follows:

> "Every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."

Section 12 of the Interpretation Act in reference to preambles and marginal notes says this:

> "The preamble of an enactment shall be read as a part thereof intended to assist in explaining its purport and object."

It should be noted that the preamble to Section 33 of the Fisheries Act reads as follows:

> "Injuries to fishing grounds and pollution of waters"

Without more one would think the purpose of those portions of the Statute is to prevent injury to fish and pollution of waters, that is, to protect the environment.

As I understand the submission of Counsel for the Crown he says that words "fair" and "liberal" applies only to the prosecution and not to the defence. Surely when one reads any Statute it must be fair to all citizens of Canada and not alone the Crown.

The Respondent's submission is that it would be reasonable and logical to expect that those responsible for the prosecution of offences such as this would seek to find out the effect on the kind of fish to be found in the kind of waters, the subject of the charge. Respondent's counsel points to the evidence of Dr. Alderdice that not only is there a difference between the chemical properties of fresh and salt water but there are also differences in the chemical properties of salt waters to be found in the Atlantic and those of the Pacific. Respondent's counsel submits that the only logical way of interpreting Section 33(11)(a) is that it must be confined to the kind of waters referred to in the charge which on the evidence, at Crofton, is Pacific salt water.

Counsel for the Crown referred to a number of unreported decisions of various Courts. The only one in my respectful opinion of those submitted by Counsel for the Crown that I find of assistance is a decision of His Honour Judge Catliff of the County Court of Vancouver, in an unreported decision of Her Majesty The Queen against Imperial Oil Limited and British Columbia Hydro & Power Authority decided November 20th, 1975. The learned County Court Judge had this to say about Section 33(11)(a):

> "(1). Has the Crown proved the deposit of a deleterious substance?
>
> Section 33(11) of the Act defines "deleterious substance" (inter alia) as:
>
> "(a) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered deleterious to fish or to the use by man of fish that frequent that water, ..."
>
> The Crown satisfied me by evidence of laboratory experiments that Fuel 46 if added to water degrades that water so that it is rendered deleterious to fish that frequent that water. It was submitted that the water referred to in Section 33(11) is water frequented by fish and that the water used by the Crown in its laboratory experiments with fish was not water frequented by fish. The Crown's evidence, however, was that the water used in the experiments was taken from Burrard Inlet at a point offshore from West Vancouver, sixty feet below lowest tide and three hundred feet from the shore. It was conceded during the trial that Burrard Inlet is a body of water frequented by fish. The water used in the Crown's laboratory experiments designed to test the effect of Fuel 46 was therefore water frequented by fish.
>
> Mr. Suiker also submitted that as there was no evidence, or no sufficient evidence, that the oil seen on the water by the Harbours Board Police on 6 November 1973 at Columbia Wharf had degraded the water in Burrard Inlet I should find that the Crown had not proved a deposit of a deleterious substance. He points out for example that no evidence was adduced by the Crown to show the effect on the bunker fuel of its journey through the sewer from Beatty Street to the harbour at the end of which it might have become innocuous to fish. The point as I understand it is that the words "that water" in Section 33(11) have reference only to the water alleged to be degraded at the actual site of the spill. I do not consider that the words "that water" are to be so construed. In my view they refer to the words "any water" earlier in the sub-section. The words "any water" would include the water at the site of a spill, but are clearly not limited to it. The only qualification to be attached to the words "any water" is that such water must be proved to be frequented by fish. As I say, the water used by the Crown's expert in his experiments was water taken from Burrard Inlet which is water admittedly frequented by fish."

While the learned Judge there interpreted the

words "any water" and "that water" more liberally than I would be prepared to do nonetheless if one applies that interpretation to the facts of the case at bar, proof that fish in freshwater are affected by exposure to added Oilsperse 43 falls far short of proof that fish in Pacific saltwater are similarly affected.

Had the Crown here done as was in the Imperial Oil case and obtained water from somewhere in Georgia Strait and then shown that fish in that water were adversely affected by the addition of Oilsperse 43 to that water then the Crown would have provided evidence such as that which must have been within the contemplation of Parliament when it enacted Section 33(11).

The evidence of Dr. Alderdice stands uncontradicted that not only is there a difference between fresh and salt water but likewise between saltwater from different bodies of sea water.

When one adds to that the fact that there is no evidence beyond a reasonable doubt that green sea urchins exist in the waters off Crofton, the Crown evidence falls far short of that degree of proof beyond a reasonable doubt which is expected in prosecutions of this nature.

To interpret Section 33(11)(a) in the manner suggested by Crown Counsel would be to impose an absolute liability for putting anything into waters frequented by fish. I am not satisfied that the Parliament of Canada intended any such thing.

On the whole of the evidence I find that the

Crown has failed to prove its case beyond a reasonable doubt and accordingly the Appeal is dismissed.

I might add that in the circumstances of this case if it were in my power to do so and were I asked to do so I would strongly consider awarding costs against the Crown.

J.C.C.

DATED at Nanaimo, British Columbia,

this 17th day of June, A.D. 1976.

BRITISH COLUMBIA PROVINCIAL COURT

Barnett J.

Regina v. Busat

Fisheries -- Putting debris into water frequented by fish -- Proper meaning to be attached to term "debris" -- Material deposited by accused encompassed -- Accused convicted -- Fisheries Act, R.S.C. 1970, c. F-14, s. 33(3).

The accused constructed a crude bridge consisting of a number of logs covered with mud across a small stream. On a charge under s. 33(3) of the Fisheries Act alleging the act of putting debris in water frequented by fish, the accused argued that the word "debris" did not encompass the structure he had implanted in the stream.

Held, the accused was found guilty. Having regard to the purpose of the legislation in question and the mischief it addressed, it was clear that the prohibition had been breached.

A.E. Vanderburgh, for the Crown.
J. Hogg, for the accused.

October 24, 1975.

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

HOLDEN AT WILLIAMS LAKE

REGINA VS BUSAT

REASONS FOR JUDGMENT

OF HIS HONOUR JUDGE G. C. BARNETT

OCTOBER 21, 1975

A.E. [illegible] for the Crown

J. [illegible] for the Accused

Mr. Busat is a person engaged in logging operations. He is charged under Section 33 (3) of the Fisheries Act, R.S.C., 1970, Chapter F-14, with having put debris into waters frequented by fish.

Section 33 (3) reads:

No person engaging in logging, lumbering, land clearing or other operations, shall put or knowingly permit to be put, any slash, stumps or other debris into any water frequented by fish or that flows into such water, or on the ice over either such water, or at a place from which it is likely to be carried into either such water.

In early May, 1975, Mr. Busat was working at a location he reached by crossing Chimney Creek, which is frequented by fish. At the point of crossing the creek runs through a meadow located upon privately owned ranch land. There was an old plank bridge across the creek but it would not accommodate Mr. Busat's logging equipment..

The old bridge was therefore demolished and the wreckage of it was simply left in the immediate vicinity.

A culvert was then placed in the creek and filled over. When it proved unsatisfactory, it was pulled out and again, the twisted wreckage was simply left in the immediate vicinity.

Two large logs were then placed in the creek parallel to the direction of flow. A number of small logs were then cut and placed across the creek, resting upon the large base logs. The surface thus created was then covered with mud and dirt. This crude creation was apparently Mr. Busat's concept of a bridge.

Immediately after all this Chimney Creek flooded. The flood waters covered the meadow above the so called bridge. While some seasonal flooding of such creeks is to be expected in this area, I have no doubt that Mr. Busat's work was substantially the cause of this flooding by restricting the flow of water within the creek bed.

As a result of the flooding, water surrounded the wreckage of the old bridge and the culvert. The sorry scene thus resulting is depicted in photographs taken by Mr. MacNill and entered as Exhibits 1 to 4, during the Trial.

I do not find it necessary to decide who destroyed the old bridge. I am satisfied that the debris resulting from this and also the remains of the culvert were initially placed upon ground not covered by water but later encompassed by the floodwaters. Therefore, to be precise, I do not think it can be said that Mr. Busat put this debris into waters frequented by fish.

It is clear that the real wrong done here was the so called construction of a new bridge, and not the careless demolition of the old one.

Mr. Busat's counsel submits that the term "debris" cannot be associated with the construction of the new bridge. In support of this submission he relies upon the definition of the word "debris" appearing in dictionaries. The Shorter Oxford English Dictionary, 3rd Edition provides a typical definition:

"Debris — The remains of anything broken down or destroyed....."
Therefore, because it is said that Mr. Busat's operations were constructive rather than destructive, it is submitted that the case must fail.

In my view, this argument offends common sense and overlooks general principles of statutory interpretation.

If Mr. Busat had been engaged in the construction of a new logging road alongside a creek and had haphazardly pushed broken tree trunks and dirt into the creek, I cannot conceive that anybody would suggest that the offence charged here had not been committed. But because Mr. Busat calls the logs and dirt he pushed into Chimney Creek a bridge, it is submitted that he has not committed the offence with which he is charged.

I have been unable to find any reference to any previous decision interpreting Section 33 (3) of the Fisheries Act and I have also been unable to find any previous decision interpreting the word "debris".

In "Maxwell on The Interpretation of Statutes" 12th Edition at page 76, the learned author states:

"The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject, or in the occasion on which they are used, and the object to be attained."

The learned author further states at page 58:

"Individual words are not considered in isolation, but may have their meaning determined by other words in the Section in which they occur."

A basic principle of statutory interpretation requires that the Court consider the mischief aimed at by a particular enactment. This principle has been considered in countless decisions since Lord Coke reported the decision by the Barons of the Exchequer in Heydon's Case in 1584.

In my opinion, Mr. Busat did precisely what Section 33 (3) of the Fisheries Act prohibits. To dignify his work by calling it a bridge is questionable. To say that he did not put debris into Chimney Creek would be to overlook the reality of the situation and to frustrate the obvious meaning and purpose of the legislation.

Mr. Busat, I find you guilty.

A Judge of the Provincial Court
of British Columbia.

BRITISH COLUMBIA COUNTY COURT

Proudfoot C.C.J.

Regina v. MacMillan Bloedel Industries Limited

Environmental law -- Water pollution -- Deposit of deleterious substance in a place where under conditions where it may enter water frequented by fish -- Changes in material deposited rendering it non-deleterious prior to entry into fish-bearing waters -- Accused acquitted -- Fisheries Act, R.S.C. 1970, c. F-14, s. 33(2).

Under instructions from the accused, employees of a second company had disposed of a quantity of log conditioning water on the accused's premises with the result that the water in question flowed into the Fraser River. Four samples of this liquid were collected: the three most distant from the river were deleterious, while the one nearest the river was not. The accused was acquitted at trial and the Crown appealed.

Held, the appeal should be dismissed. While the water in question was deleterious when discharged, it become totally innocuous prior to entry into the river, and therefore the Crown had failed to prove an essential element of the offence.

H.J. Wruck, for the Crown.
I.G. Nathanson, for the accused.

March 17, 1976.

No. 916/75

IN THE COUNTY COURT OF VANCOUVER

HOLDEN AT VANCOUVER

REGINA)
APPELLANT) REASONS FOR JUDGMENT
V.) OF
MACMILLAN BLOEDEL INDUSTRIES LIMITED) HER HONOUR JUDGE PROUDFOOT
RESPONDENT)

Counsel for the Crown/Appellant:	R.J. Wruck, Esq.
Counsel for the Respondent:	I.G. Nathanson, Esq.
Date of Hearing:	March 17th, 1976.

This matter comes on before me by way of appeal (trial de novo) from the Provincial Court, judgment of His Honour Judge Bendrodt made on June 16th, 1975, wherein he directed that the Respondent MacMillan Bloedel Industries Limited be acquitted of the charges. There are two counts initially in the notice of appeal; however, Counsel for the Crown withdraws Count 2. Accordingly the charge before this Court is as follows: the Respondent,

> "At the City of Vancouver, Province of British Columbia, on or about the 21st day of March, A.D. 1974, did unlawfully deposit a deleterious substance in a place under conditions where such deleterious substance may enter waters frequented by fish: contrary to the form of the statute in such case made and provided."

The facts are not in issue and pursuant to Section 736(5) of the Criminal Code a statement of admissions was made and filed as Exhibit 1. This charge was proceeded with under Section 33(2) of the Fisheries Act, R.S.C. 1970, c. 63, which reads as follows:

> "(2) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water."

Paragraphs 19, 20 and 21 of the statement of facts which are not in issue clearly establish that the log conditioning water was a deleterious substance as defined in the Fisheries Act. Paragraph 18 of the statement of facts clearly establishes that the substance was not a deleterious substance at that point. Each of these paragraphs refers to a sample taken commencing with Sample 4 taken at the point of discharge to Sample 1 being taken at the point of entry into the Fraser River. The Sample 1 taken, as referred to in Paragraph 18, was that nearest to the Fraser River. It appears what occurred was a deleterious substance was discharged approximately one thousand feet from where it entered the Fraser River. Some filtering process took place as this substance moved along. Accordingly when Sample 1 was tested, this being the nearest to the river and the furtherest from the point of discharge, it was found to be not deleterious.

The Crown's position is simply that their onus is discharged once they have proved that the substance discharged was deleterious. The onus on the Crown would have been discharged if the substance analyzed in Samples 1 to 4 were proved to be deleterious; then thereafter and prior to entry in the Fraser River were deleterious and/or on the evidence before me became totally innocuous prior to entry into the Fraser River. It follows the Crown has not brought themselves within the appropriate section.

The appeal is dismissed.

Patricia M. Proudfoot,
C.C.J.

VANCOUVER, BRITISH COLUMBIA,

May 6th, 1976.

REGINA V. MacMILLAN BLOEDEL INDUSTRIES LIMITED

Pursuant to Section 736(5) of the Criminal Code of Canada and for the purposes of the within trial the Defendant, MacMillan Bloedel Industries Limited, hereby admits as follows:

(1) MacMillan Bloedel Industries Limited, a company duly incorporated under the laws of the Prov. /B.C. (hereinafter referred to as the Defendant) owned a piece of property situate at 3512 South Kent Street, in the City of Vancouver, in the Province of British Columbia (hereinafter referred to as the said property) from January 1, 1974 to December 31, 1974 inclusive and including March 21, 1974.

& registered in the Prov. /B.C.

(2) The Defendant operated a plywood plant at the said property from January 1, 1974 to December 31, 1974 inclusive and including March 21, 1974.

(3) The Defendant owned three tanks, which were situate on the said property from January 1, 1974 to December 31, 1974 and including March 21, 1974.

(4) On March 21, 1974, the three tanks mentioned in paragraph (3) of these Admission of Facts contained approximately 15,000 to 20,000 gallons of water (hereinafter referred to as log conditioning water), which was at times heated up to a temperature of 100°F.

(5) The log conditioning water had been used at one time on a daily basis during the winter of 1974 to defrost logs by depositing up to 300 frozen logs into the log conditioning water for a period of four to eight hours.

(6) Before depositing the frozen logs into the log conditioning water the bark was removed from each frozen log.

(7) On March 21, 1974 MacMillan Bloedel Industries

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Limited decided that log conditioning water would no longer be required.

(8) The Defendant hired A. & A. Anderson Septic Tank Limited to remove the log conditioning water from the three tanks located on the said property.

(9) A. & A. Anderson Septic Tank Limited was directed by the Defendant on March 21, 1974 to discharge the log conditioning water from the three tanks into a certain portion of the Defendant's property near the Fraser River in the City of Vancouver, in the Province of British Columbia.

(10) A. & A. Anderson Septic Tank Limited did remove the log conditioning water out of the tanks and pumped it into their trucks on March 21, 1974.

(11) In accordance with the instructions received from the Defendant, A. & A. Anderson Septic Tank Limited took the log conditioning water in and about the area designated by the Defendant and there discharged the log conditioning water into the ground.

(12) A total amount of 2,000 gallons of log conditioning water flowed from the place of discharge by A. & A. Anderson Septic Tank Limited into a ditch and through a culvert (hereinafter referred to as the said culvert) which discharged the log conditioning water into a ditch (hereinafter referred to as the said ditch) along Boundary Road in the City of Vancouver, in the Province of British Columbia, which lead into the Fraser River, which was also situate in the City of Vancouver, in the Province of British Columbia.

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(13) The said ditch along Boundary Road where the log conditioning water was discharged from a culvert into the said ditch was approximately forty to fifty yards from the Fraser River.

(14) The total distance that the log conditioning water travelled before it entered into the Fraser River was approximately one thousand feet.

(15) Certain portions of the log conditioning water entered the Fraser River, which is situate at the City of Vancouver, in the Province of British Columbia.

(16) Four samples of the log conditioning water were taken by an Environmental Protection Services Officer of the Department of Environment on March 21, 1974.

(17) Sample No. 1 was taken at the said culvert where the log conditioning water was discharged into the said ditch along Boundary Road in the City of Vancouver, in the Province of British Columbia.

(18) Sample No. 1 was then tested by a qualified biologist and found not to be a deleterious substance within the meaning of the Fisheries Act, Chap. F-14, S.C.

(19) Sample No. 2 was taken at a point where the log conditioning water entered the said culvert.

(20) Sample No. 2 was then tested by a qualified biologist and found to be a deleterious substance within the meaning of the Fisheries Act, Chap. F-14, S.C.

(21) Sample No. 3 was taken from the Defendant's property where the initial discharge of the log conditioning water was made by A. & A. Anderson Septic Tank Limited.

.../4

(22) Sample No. 3 was then tested by a qualified biologist and found to be a deleterious substance within the meaning of the Fisheries Act, Chap. F-14, S.C.

(23) Sample No. 4 was taken from the Defendant's three tanks located at the said property.

(24) Sample No. 4 was then tested by a qualified biologist and found to be a deleterious substance within the meaning of the Fisheries Act, Chap. F-14, S.C.

(25) Log conditioning water has a tendency of exhibiting unstable characteristics as a result of its chemical composition.

(26) Between January 1, 1974 and December 31, 1974 and including March 21, 1974 fish frequented the Fraser River situate at the City of Vancouver, in the Province of British Columbia.

MacMILLAN BLOEDEL INDUSTRIES LIMITED

per ______________________________

Counsel for the Defendant,
MacMillan Bloedel Industries
Limited.

BRITISH COLUMBIA PROVINCIAL COURT

Hogg J.

Regina v. MacMillan Bloedel Industries Ltd.

Fisheries -- Unlawfully putting debris in water that flows into water frequented by fish -- Logging operation under control of the accused resulting in deposit of debris into tributary of stream flowing into fish-bearing river -- Strict liability offence -- Accused convicted -- Fisheries Act, R.S.C. 1970, c. F-14, s. 33(3).

The accused was charged with unlawfully putting debris in water flowing into water frequented by fish after a logging operation under its control resulted in the deposit of a considerable quantity of wood waste into a tributary of a stream that in turn flowed into a fish-bearing river.

Held, the accused was convicted. The offence was one of strict liability and therefore the Crown was not obliged to prove *mens rea*.

The Queen v. Pierce Fisheries Ltd. (1971), 12 D.L.R. 3; *Attorney-General of Canada v. Brydon*, [1975] 2 W.W.R. 705; refd to.

Fisheries -- Sentence -- Putting debris in water that flows into water frequented by fish -- Accused fined fifteen hundred dollars -- Fisheries Act, R.S.C. 1970, c. F-14, s. 33(5).

While the offence was not an extremely serious one, the accused had carelessly breached an agreement made with fisheries and forestry officials to log the area in question in a lawful manner. However, taking into account the size of the company and the rectification of the damage which it had undertaken, the public interest was protected by a fine of fifteen hundred dollars.

H.J. Wruck, for the Crown.
D.W. Shaw, for the accused.

April 5, 1976.

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
HOLDEN AT QUEEN CHARLOTTE CITY
(Before: His Honour Judge G.P. Hogg)

Queen Charlotte City, B.C.,
April 5, 1976.

R E G I N A
V S
MAC MILLAN BLOEDEL
INDUSTRIES LTD.

JUDGMENT (ORAL)

H.J. WRUCK, ESQ.	Counsel for the Crown
D.W. SHAW, ESQ.	Counsel for the Defendant

HOGG, G.P. (Oral):

This is a charge against MacMillan Bloedel Industries Ltd. that it did on or about the 14th day of April, 1975, while engaged in logging, unlawfully put debris in the waters that flow into waters frequented by fish, to wit, the Yakoun River, in the County of Prince Rupert in the Province of British Columbia, contrary to the provisions of Section 33(3) of the Fisheries Act, amended.

There's a second count on the Information.

On August 22nd, 1975, judgment was reserved on Count 1. Mr. Shaw appeared for MacMillan Bloedel and argued sentence in the event of a conviction. Mr. Wruck appeared for the Prosecution and judgment was reserved. I am prepared to give judgment now.

There was in reality no dispute as to the facts. Mr. Eckard Mendel, Forest Ranger, Queen Charlotte City, testified for the Prosecution. His job for a year and a half on the Queen Charlotte Islands had been to report, inspect and manage tenures and cutting permits and in the course of his duties he investigated what was known as Cutting Permit No. 39. He first became involved with that permit, which was a permit held by the Defendant, on February 3, 1975, when a written application from MacMillan Bloedel was made for an amendment to the permit, to permit logging on an area other than the area covered by the permit. As a result of that application, an arrangement was made between Mendel, Paul Chapman, and Kieth Hebron, the Fisheries Officer, to visit the site.

The site covered by Permit No. 31, as the application for an amendment covered, covered part of Graham Island including parts of the Yacoun River and King Creek, as shown on a map which I think was marked Exhibit 1. In any event, as a result of that joint inspection, they went out again on February 4th to inspect King Creek and the three men decided that the portion of the creek above the road could be protected in such a way as to permit logging and to allow logs to be felled across the creek without damaging the creek. Because of the steepness of the slope towards the creek, these three gentlemen, Mr. Chapman, of course, representing the Defendant, decided that what could not be felled across the creek could be yarded across so as not to touch the water. They also decided that below the creek the trees were to be felled away from the creek and away from the tributary, King Creek being a tributary which flows into the Yakoun River, as I understand it.

On the basis of that inspection, this witness, Mendel, drew up a memorandum of what had been agreed upon and wrote a letter to the company. On receipt of that letter, Mr. Chapman and Mr. Murchison, I think it was, stated that there would be no problem protecting the creek, that it could be done and would be done and there would be no problem in protecting the tributaries of King Creek. It was arranged that Mr. Chapman would telephone the Fisheries Department and the Forestry Branch when the logging had begun so that a further inspection could be made. Chapman said that logging would start about April 1st. Chapman is the Divisional Engineer for MacMillan Bloedel on the Islands, or he was at this time, and was responsible for the engineering work which included the laying out of the blocks and the looking after of the resources of the forest.

The stream, when the logging commenced or before the logging commenced, was in a natural state. There was no disturbance and no debris whatever in the stream on February 6th.

In April, this witness received certain information and as a result of that information he and the Fisheries Officer, Pebron, went to the area where they met Chapman and another employee and they found the creek full of debris with logs and debris in the tributary of King Creek, both above and below the tributary and the creek itself. Chapman said he had no idea what had happened but he accepted full responsibility and he had no excuse and according to this witness, that made the credibility gap very wide, whatever he means by that. It's my understanding that this logging had been contracted out and because of a lack of communication the logging was not done in the way which the company intended it to be done or directed it to be done. The tributary was full of trees, branches and whole logs that had been felled. It was almost impossible to see the water and there was a six foot depth of material on the creek.

The exhibits, the photographs showed the damage to the creek. There were a number of photographs, Exhibits 4, 5, 6, and 7. In addition to that, there were a large number of slides which showed the damage pretty well as this witness described it, and from those slides you could see the logs in the tributary match the stumps of the trees that had been cut. This witness said that from his experience he would say that they had undercut purposely to guide them directly into the creek. They were fresh cuts, not more than two or three weeks old. He testified that there were fish in the Yakoun River and that he himself had caught several fish in the river shortly before April 18th.

Now, that is pretty well the evidence. He was cross-examined at some length and he stated that there had already been logging on the west block, he didn't pay particular attention to the west block. He didn't notice any logging near the streams in that block. There was some discussion about logging in the west block and as far as I can remember there was no suggestion that timber would have been felled into the stream on the west block. I did O.K. the cutting of timber across the stream above the road area. Because of the physical condition of the stream, I O.K.'d the cutting of timber across it above the road area. We agreed that the trees could be felled across the draw with no damage to the creek. The odd piece of debris would land in the creek but that would be of no significance. The stream would be free flowing and clear.

The witness was then asked if two or three of the trees below the creek in the east block were leaning towards the creek and he admitted they were but he said that's why we got George Murchison, he was an expert and he said they could be felled away from the creek. It was also suggested to the witness that it was agreed that they could be felled across the creek but he denied it. According to Murchison, they could all be felled away from the creek. It was the area below that caused them to get Murchison. He admitted that the tributary is just a few feet wide, not more than two or three feet, that the depth is, in places, only three or four inches but in other places in pools up to about a foot. It also contains alot of twists and turns. He admitted that the tributary was still flowing but it had been diverted 10 or 20 feet in a number of places. He said that very shortly afterwards he asked Mac Millan Bloedel to clean up the debris and gave them a month to do so. He went out within the month for a further inspection and was completely satisfied with the way MacMillan had cleaned up the debris and he was satisfied with the results. He said that the damage in the net result would be minimal. I don't understand that because on re-direct he said what he meant was it would be minimal compared to damage that might have been done had it happened in Area A rather than in Area B, but on re-direct he said there was much more than minimal damage, there was alot of damage.

Hebron also gave evidence. He was the Fisheries Officer. He said he'd been four years in the Charlottes. Previous to February 4th he had called a joint inspection with Mendel in Area A. There were no recently cut logs or debris at all. "It was what we called a virgin stream that could be capable of allowing coho to spawn. The inspection was for the purpose of determining whether timber could be cut without jeopardizing the stream itself. Our purpose was that none of the logs or debris would end up in the stream. They assured us there would be no problem at all. It would be logged with minimal damage, if any. All timber would be felled across or high lifted so they would not touch the stream." Chapman said this is a critical area, they would be in touch with us. As the Department of Fisheries received no word, another inspection was made on April 18th. The stream had been completely diverted in some places and debris had been piled to six feet high in some places.

There were two admissions made by counsel; that MacMillan Bloedel Industries was engaged in logging in the King Creek area between February and May of 1975, and secondly, that the Yakoun River is frequented by fish.

On cross-examination, it had been said that the initial inspection was with Chapman and Murchison. I can't recall whether we inspected any other area. At first there was just the two of us, we went and got Murchison. Perhaps Murchison was not with us when we first discussed the tributary but he was the second time. He was asked whether there were trees in the downstream area leaning over the stream and said there were several that were questionable. It was agreed that upstream they could be felled across the stream but not touch it. Downstream there were no trees and it was agreed they could be felled across. The tributary along King Creek to the Yakoun River was two and a half miles. I think that's an error on my part. The distance, I think, from the tributary along King Creek to the Yakoun River is two and a half miles.

Now, on that evidence, Defence argued first that there was no indication that any of the debris went into the Yakoun River; 2) there was no proof of any harm to any fish; 3) there was full and complete acceptance of the blame by the Defendant; 4) this happened by mistake, that the right-of-way fallers needed work and that the work had been contracted out by MacMillan Bloedel Industries. The debris, in the end result, was cleaned up in full, there was no damage.

Now, on that evidence, I must decide whether MacMillan Bloedel Industries Ltd. did unlawfully put debris into waters that flow into waters frequented by fish, to wit, the Yakoun River, contrary to the provisions of Section 33 (3) of the Fisheries Act, as amended. The section reads as follows:

> "No person engaged in logging, lumbering, land clearing or other operations shall put or knowingly permit to be put any

> slash, stumps or other debris into any waters frequented by fish or that flows into such water or on the ice over either such water or the place from which it is likely to be carried into either such water."

It is my opinion that that section is what is called a strict liability section. In other words, it is a complete prohibition. Mens rea, in my opinion, is not an element of the offence. It is not really a criminal offence. The section is there for the purpose of protecting the public and it must be complied with. It's true that the section contains the word "knowingly" in part of it. "No person engaged in logging, lumbering, land clearing or other operations shall put or knowingly permit to be put any slash, stumps", and so on. I don't think that changes the situation.

There was no evidence that anyone other than MacMillan Bloedel Industries Ltd. or their sub-contractors put the debris into that creek. The principals of strict liability were reviewed by the Supreme Court of Canada in the Queen vs Pierce Fisheries Ltd., 12 D.L.R. 3, p. 591; (1971) (S.C.R. 5). In that case the Respondent Company was charged with a violation of the Fisheries Act which makes it an offence to possess an undersized lobster as defined in the Schedule. The evidence showed that out of fifty to sixty thousand lobsters brought into the plant on the day in question, some 26 were undersized. Neither the officers of the company or any responsible employee was found to have any knowledge of the presence of the undersized lobsters. The question was whether or not the offence was one of strict liability and the Court, with Chief Justice Cartwright dissenting, held that it was.

Mr. Justice Ritchie, with whom the majority of the Court agreed, set out three classes of cases wherein the presumption of mens rea is not applicable. Firstly, acts not criminal in the real sense of the word but acts prohibited under penalty for the public good. Secondly, public nuisances. Thirdly, criminal proceedings which are really summary means of enforcing a civil right. He stated this: "If the purpose of the Statute is to add a new crime to the general criminal law it is natural to suppose that it is to be read subject to the general principals according to which that law is administered but other considerations arise wherein matters of police, of health, of safety, or the like, where legislatures adopt penal measures in order to cast on the individual the responsibility of so conducting his affairs that the general welfare will not be prejudiced."

In my opinion, the true object of this sub-section is to regulate an activity pro bono publico and not to create a new criminal offence. The Pierce case was referred to in 1975 in the case of Attorney-General of Canada vs Brydon (1975) 2 W.W.R. 705 (C.A.). In that case, a farmer was convicted of having delivered to the grain pool, grain in excess of the quota allotted to him under the Canada Wheat Board Act. The farmer had got into the habit of following directions of his agent as to how much grain he had delivered to the authorities and by an honest mistake the agent mislead the farmer as to the amount of grain he'd already delivered and acting on the word of the agent, the farmer delivered grain in excess of his quota. It was held by the Court of Appeal in Manitoba that the offence was one of strict liability, that the Act in question was to provide for the orderly distribution of grain and that such provision was in the public interest and that therefore, it made no difference whether it was an honest mistake or not.

I find that this is a strict case of strict liability. I find that the tributary did flow into King Creek, it did flow into the Yakoun River and that the Yakoun River is water frequented by fish. That being so, I find the Defendant guilty.

Now, as to sentence. It was suggested to me that a heavy penalty was indicated should I find the Defendant guilty. I think one previous conviction was proved in which--put it this way, a conviction very close to here in which the fine was $1500. The maximum penalty is $5000. It was argued before me that this tributary contained so very little water that the likelihood of any debris at all reaching the waters that had been admittedly waters containing fish, was slight. In other words, the tributary was, in places, two or three inches deep and a few inches in width. It was more of a trickle than a real tributary. There was no evidence one way or another as to whether debris from that rivulet if you like, would reach King Creek and would eventually reach the Yakoun.

In view of the fact that there was no evidence, I think I must assume that there is a strong possibility that some, at least, of the debris would reach the Yakoun River. Whether or not it would interfere with the fish spawning is a matter of speculation. I do not consider this offence extremely serious except insofar that the Defendant, through its servants, did breach an agreement that they had made with the Forestry and Fisheries authorities. I am reasonably satisfied that it was done--certainly wasn't done deliberately, I think it was done carelessly, I think there was a lack of communication between the Defendant Company and the men who actually did the falling. I think the Defendant Company, when it was brought to its attention, immediately did all in its power to rectify the damage that had been done and I take that into consideration.

Now, as to an amount, I cannot help but take judicial notice the fact that MacMillan Bloedel Industries Ltd. is one of the largest corporations, one of the largest public corporations in Canada and that the fine, no matter what fine is imposed, is in all likelihood not going to be borne by the shareholders.

It is borne, in the final analysis, probably by the taxpayer. Whether that's so or not, the difference between $5000. and $1000. or even $100. for that matter, is not really a great importance nor is the amount of that fine a deterrent to a company that deliberately wishes to defy the provisions of these Statutes. The public, on the other hand, must be made aware that these Acts are there to be obeyed. T hey are there for the protection of the whole of the public and a fair fine under the circumstances is $1500. and I fine the Company that amount.

Count #2 was withdrawn or rather there was a Stay of Proceedings.

I HEREBY CERTIFY the foregoing to
be a true and accurate transcript
of the proceedings herein to the
best of my skill and ability.

Genevieve M. Bekar
Genevieve M. Bekar
Official Court Recorder.

PART III

UNREPORTED REMARKS ON SENTENCING UNDER SECTION 33 OF THE FISHERIES ACT

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 Magistrate's Court, Magistrate F.G. Smith

REMARKS ON SENTENCING FOLLOWING GUILTY PLEAS

Company	Fine	Nature of Offence and Issues Considered
Whonnock Lumber	$3000 33(3)	Damage to spawning grounds
K.P. Wood Products	$3500 33(2)	Sawdust on ice, long delay before remedial action taken
Finning Tractor and Equip.	$ 750 33(2)	Oil allowed to reach water, warning to Company not given by letter nor given to officer of Company, remedial action taken
Federated Co-operative	$3000 33(3)	Barge load of debris dumped into lake, injunction to refrain granted,
Cardinal River Coals	$7500 33(2)	Coal fires silting stream, no toxicity, $200,000 to be spent to remedy
Columbia Cellulose	$1500 33(2)	Pumping failure, red liquor from pulp mill, Pulp and Paper Effluent Regulations not applicable to the Defendant's mill (p.73)
Giant Yellowknife Mines	$2000 33(2)	Tailings spill, deterrent, large expenditures for prevention

BRITISH COLUMBIA PROVINCIAL COURT

Guinet Prov. Ct. J.

Regina v. Whonnock Lumber Company Limited

Fisheries -- Sentence -- Deposit of debris in water frequented by fish -- Spawning channel damaged by logging operations -- Accused negligent in failing to ascertain existence of spawning area and failing to prevent damage to it -- Three thousand dollar fine -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(3), 33(5).

Darragh Vamplew, for the Crown.
John Fraser and William Ferguson, for the accused.

January 28, 1971.

MGM..

PROVINCIAL COURT OF BRITISH COLUMBIA
CRIMINAL DIVISION
HOLDEN AT CHILLIWACK
(Before His Honour Judge A. M. Guinet)

CANADA	)	REGINA
PROVINCE OF BRITISH COLUMBIA	)	vs
COUNTY OF WESTMINSTER	)	WHONNOCK LUMBER COMPANY LIMITED

Chilliwack, B.C.
January 28, 1971.

DARRAGH VAMPLEW, Esq.,	appearing for the Crown,
JOHN FRASER, Esq., and WILLIAM FERGUSON, Esq.,	appearing for the Defendant Company.

REMARKS OF HIS HONOUR AT SENTENCING

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THE COURT: Well, I think I can agree with defence counsel that this is not a situation to impose the maximum penalty. On the other hand, I am really, I think, trying to impose a penalty which will indicate that the practice of doing things that are likely to harm fish is a serious matter and it must be made obvious that it is serious.

It would seem to me that the cost of reconditioning the spawning channel is not a thing that should be too much on my mind. It may give me some impression of the seriousness of the matter, but by and large I would think that this is a civil matter between the Fisheries Department and Whonnock Lumber.

I am more concerned with the principle of harm that is done and loss sustained by the public generally and a loss of the fish. I feel that I have to quote a substantial figure. I think it is impossible to reach anything that is going to be what other judges would reach. I think it is, unfortunately, a matter somewhat of guesswork.

I do think that this is a substantial logging operation obviously done for substantial profit. When a corporation that is licenced to do this and allowed to go in there to do it, they should be able under ordinary circumstances to obtain all the technical advice that is necessary to prevent the doing of harm.

I think that they have been quite remiss in not knowing of the existance of this spawning channel. I would think that when they are operating in an area where there are streams, that it would be one of the first things that they would have to check, would be what possible harm their operations would do to the fish in that stream and to find out if there are any special problems in relation to fish. This they apparently did not do and I think that is a negligent act of some considerable consequence.

I am imposing a penalty by way of fine in the amount of $3,000.

……

I hereby certify the foregoing
to be a true and accurate transcript of the proceedings herein.

Deputy Official Court Reporter

BRITISH COLUMBIA PROVINCIAL COURT

D.M. MacDonald Prov. Ct. J.

Regina v. K.P. Wood Products Ltd.

Environmental law -- Water pollution -- Sentence -- Permitting deposit of deleterious substance in a place under conditions where may enter water frequented by fish -- Emission of partially burned and unburned sawdust onto ice covering river -- Accused negligent in implementing remedial measures -- Three thousand five hundred dollar fine -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(5).

The accused was convicted on a charge of permitting the deposit of a deleterious substance in a place under conditions where it may enter water frequented by fish after a considerable quantity of partially burned and unburned sawdust was emitted from its plant onto the ice covering the North Thompson River. The evidence showed that the sawdust would adversely affect fish by obstructing the flow of fresh water over salmon spawning beds and depleting the oxygen from the water through decomposition.

Held, the appropriate fine was three thousand five hundred dollars. The delay by the company in rectifying the problem required a more serious penalty to be imposed in order to satisfy the objective of deterrence.

L.P. Jensen, for the Crown.
A.S. Berna, for the accused.

July 2, 1971.

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
BEFORE HIS HONOUR JUDGE D.M. MacDONALD
KAMLOOPS. B.C.
JULY 2, 1971.

REGINA
VS
K.P. WOOD PRODUCTS CO. LTD.

L.P. JENSEN, Esq., appearing for the Crown.
A.S. BERNA, Esq., appearing for the Accused.

SENTENCE

THE COURT: The Accused company is charged under Section 33, subsection 2 of the Fisheries Act, the section in this particular Act that was proclaimed on the 15th of July, 1970. They are charged that, "on or about the 21st day of January, A.D. 1971, did unlawfully permit the deposit of a deleterious substance in a place, to wit: at or near the North Thompson River, under a condition where such deleterious substance may enter water frequented by fish."

The deleterious substance alleged in the Information was partially burned or unburned sawdust and was deposited on the snow and the ice on the North Thompson River during the winter time and specifically deposited on the ice on the 21st day of January, 1971.

I believe that in a case like this the Court has to take into consideration the series of events that led up to the day that

this charge was laid. It would appear that the Accused company had purchased the mill in question in 1966 and that when it purchased this mill it would be in the words of Defence Counsel "in a deplorable condition. The Fisheries Department officers examined the situation, as far as the record before the Court indicates, in the month of October, 1969, and at that time they observed that the sawdust was going out of the burner and settling into the North Thompson River. The Fisheries Department officers made two more visits in October, on the 5th and 6th, and they emphasized to the mill staff at that time that the escaping sawdust from the burner must be stopped.

The Company did make some efforts at this time to repair the burner, however the condition persisted and the burner continued to emit sawdust onto the ice and snow on the North Thompson River during the winter of 1969 and 1970. During this time the Fisheries Department officers visited the mill several times and emphasized that they must take some positive action to stop the situation from proceeding. Again steps were taken by the company from time to time, including an expenditure of $10,000.00, however these repairs were, as far as the burner was conderned which again cost them a considerable amount of money, of little avail and the situation persisted.

Now, I am concluding from the evidence that the sawdust was deposited each operating day onto the river, on the snow and ice. It is true that during certain times the mill was shut down and during these times the situation wouldn't exist. Now, the extent of the deposits becomes clear to this Court when one considers the evidence that during the winter time the deleterious substance was observed for a half mile below and a half mile above the mill and these deposits were heavily concentrated for one thousand feet above the mill and one thousand feet below and throughout the width of the river.

Now, until recently this type of situation would possibly not concern very many people, however it has been put before the Court that the sawdust in the river has two effects:

(1) the sawdust disturbs the normal flow of intergravel water and in this way cuts off oxygen supply to salmon eggs
(2) Sawdust deposits undergo a decay process as a result of microbial activity, and consequently tend to use up the oxygen supply percolating through the stream bed.

Now, the Court has been told that the North Thompson River is a spawning area and

in my opinion this sawdust flowed some thirty miles below the mill so this is clearly a situation that is serious in the sense that the deposit of the deleterious substance is very great.

The maximum fine is $5,000.00. The purpose of this particular statute is to preserve one of our most valuable resources, salmon and fisheries, and in this particular case I am aware that this company had knowledge and they had been advised on at least a dozen occasions to deal effectively with the problem and to stop depositing this sawdust in the river and on the ice on the river.

I have no alternative here but to conclud that in spite of continuing pressing requests, later demands, to remedy this situation, the Accused company failed to do so. It is true they did take steps and they did take action from time to time to remedy this situation. It is also true that the action they took was inadequate and it didn't stop sawdust from going into the river.

I am advised today they have taken action or steps to remedy the situation. I don't know what they are, but apparently they are effective in that Mr. Goodman, Fisheries Officer, advised the Court there is a marked difference between the amount of sawdust flying from this burner as opposed to January of this year. Now, this seems to indicate to this Court that there was a remedy available and it is regrettable indeed that this remedy wasn't effected some two years ago. I believe I must take this into consideration when I am assessing the penalty This is not a case where the Fisheries Officer sees the sawdust being emitted into the river as they did here and at that time, or after a short period, and maybe after one warning or so they laid a charge. One might say in that type of situation where there was no knowledge of the damage that was being done that the Court should assess a nominal fine. This is different. These people knew for some considerable length of time the damage they were doing and although they did take some steps those steps weren't adequate. If they could take steps in the last little while that were adequate they could have done it when the matter was first brought to their attention.

I have given the matter considerable thought and I feel there is a duty on the Courts to assess a penalty, where the circumstances are such as they are here today, that is going to give effect to the Statute and provide some form of deterrent to other people who would choose to ignore the particular situation I am dealing with here

It must be made clear such a situation cannot and won't be tolerated.

I believe looking at the over all facts and the whole of the evidence presented to me I should assess a penalty that is a heavy one.

It is the decision of this Court that K.P. Wood Products Co. Ltd. be assessed a fine of $3,500.00, in default distress. In the light of your remarks this Court wouldn't make an order under Section 33-7 of the Act.

I HEREBY CERTIFY THE FOREGOING
TO BE A TRUE ACCURATE RECORD
OF THE PROCEEDINGS
DON [illegible]
DEPUTY OFFICIAL REPORTER

BRITISH COLUMBIA PROVINCIAL COURT

Greig Prov. Ct. J.

Regina v. Finning Tractor and Equipment Co. Ltd.

Environmental law -- Water pollution -- Sentence -- Oil spill -- Permitting deposit of deleterious substance at a place where it may enter water frequented by fish -- Mitigating factors justified less severe penalty -- Fine of seven hundred and fifty dollars -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(5).

The accused was convicted of an offence against s. 33(2) of the Fisheries Act after its employees caused the deposit in question through faulty procedures for cleaning up an accidental spill of oil.

Held, a fine of seven hundred a fifty dollars was levied. The satisfactory remedial action taken by the company to prevent any further infractions was the most important factor in mitigating sentence, but also considered were the small size of the spill and the accidental circumstances under which it occurred.

L.P. Jensen, for the Crown.
A.S. Berna, for the accused.

October 20, 1971.

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
BEFORE HIS HONOUR, JUDGE R.W. GREIG.

KAMLOOPS, B.C.
October 20, 1971.

REGINA
VS
FINNING TRACTOR AND EQUIPMENT CO. LTD.

P. JENSEN, ESQ., appearing for the Crown.
A. SERNA, ESQ., appearing for the Defence.

REASONS FOR JUDGEMENT

GREIG, JUDGE:
(Orally)

I think the submissions are brief enough and the evidence is all before me now so far as the question of sentence is concerned. It would serve no useful purpose I think to adjourn the matter of sentencing until later. I had thought of doing that so that we could see what the Pollution Control people would do, but I think we're looking at another month or so and I don't like to adjourn it that long, it's something that's been before us now for a month and a half anyway so we should deal with it.

The portion of the testimony introduced by the Crown that concerned me most in so far as sentence was concerned was the suggestion that the company had in effect been warned about this kind of problem on at least two previous occasions. However, Mr. Moore's testimony leaves me in some doubt that any warning as such was ever communicated effectively to him, and although we didn't witness we do have

the evidence of Mr. Moore to the effect that Mr. Anderson is not an officer or director apparently of the company, and Mr. Moore's evidence also that he is at the plant on an average of three and a half days a week and that he lives in Kamloops and presumably would be available should any formal warning have been thought necessary, and there's nothing to indicate that any formal written notice or warning or instruction was ever delivered to the defendant company through Mr. Moore or anyone in the capacity of an officer or director of the company.

I think, therefore, that it is fair to say that what we're dealing with here is in every sense a first offence. The discharge apparently was one not directly into the river in the sense that the defendant company dumped fuel oil or grease oil directly from some container into the river, nor is it, it would appear, any kind of discharge into the river which was intentional, and I'm not overlooking the fact that there is ample authority for the proposition that Mens Rea is not an element in the offence that we're concerned with here. However, it is a factor to be considered in sentencing certainly. The quantity of oil which was discharged, or combination of oil and detergent which together would appear to constitute a deleterious substance although the evidence that we have from the expert is really relative to oil alone I think. In any case the quantity of the deleterious substance is in some doubt and may be perhaps in total anything from five to twenty gallons in a diluted form, certainly not by a direct dumping, it was mixed with a large quantity of water and although it apparently entered the river in a consentration far in excess of what is normally considered safe, it was under circumstances in which the servants of the defendant company had apparently endeavoured by the wrong means to dispose of an accidental spill. All of that as I say is not significant so far as the offence itself is concerned, the commission of the offence, but is of some importance when considering sentence. The more important factor in sentencing is that I'm satisfied by what the defence has said that the company is doing everything it can at present to implement a plan which the witnesses to-day have indicated would seem to be one which will probably prove effective in avoiding any future damage to the river system from this kind of spillage and they have been delayed in their efforts to implement the plan principally it would seem by the difficulty with the Pollution Control Board.

The further question then is whether any injunction should be ordered. But it would seem to me that in as much the Pollution Control Board seems to be investigating not only the matter of the soil content and doing this by percolation tests and otherwise but they're obviously enquiring into it on certain other bases, and any injunction which the Court might order now would in all probability complicate the compliance by the defendant company and might even conceivably conflict with something which the Pollution Control Board might decide was necessary or helpful in deciding upon a system to be approved.

I think, therefore, that a fine alone would suffice and I should emphasize in dealing with the matter now that the fine which will be imposed, although considerably less than the maximum, is not intended to be any condoning of spillage or any expression by the Court of an opinion that such spillage is anything but a serious matter. But it is being dealt with on the basis that we're concerned with an accidental spill which has occurred on one occasion only in so far as the evidence is concerned, although I'm not overlooking that the Department has been concerned for some time, but so far as notice to the defendant that that is the situation, and principally because the plans which the defendant company has prepared and which the company is prepared to implement as soon as they are authorized to do so by the Provincial Government seem to be adequate both in the opinion of the Company's own engineers and the expert called by the Crown.

The fine will be $750.00, time to pay November 1st.

Prov. Court Judge.

Certified transcript of
proceedings as recorded
pursuant to Order in Council
No. 1650.

BRITISH COLUMBIA PROVINCIAL COURT

Arkell J.

Regina v. Federative Cooperative Limited

Fisheries -- Sentence -- Permitting the deposit of debris in water frequented by fish -- Knowledge of statutory prohibition attributed to management of the accused corporation -- Penalty required to ensure deterrence -- Fine of three thousand dollars -- Order to refrain -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(5), 33(7).

The accused corporation was convicted on a charge of permitting the deposit of debris in water frequented by fish contrary to s. 33(3) of the Fisheries Act after a load of wood waste was dumped from one of its barges into Shushwap Lake.

Held, a fine of three thousand dollars was imposed and the company was ordered to refrain from further dumping. Knowledge of the statutory prohibition was to be attributed to the officers of the corporation even if the resident manager claimed ignorance of it. Accordingly, a severe penalty was required to ensure that this company or others like it would not commit similar offences.

L.P. Jensen, for the Crown.
D.S. McTavish, for the accused.

December 16, 1971.

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BEFORE HIS HONOUR JUDGE K. ARKELL

Salmon Arm, B.C.

December 16, 1971.

REGINA

VS

FEDERATED CO-OPERATIVE LIMITED.

L.P. JENSEN, Esq., appearing for the Crown.

D.S. McTAVISH, Esq., appearing for the Defence.

SENTENCE

THE COURT: (Oral) The accused Company, Federated Co-operative Limited, is charged that on or about the 5th day of September, A.D. 1971, in the County of Yale and Province of British Columbia, while engaged in lumbering did unlawfully permit debris to be put into water frequented by fish, namely Shuswap Lake, Contrary to the Provisions of Section 33 of the "Fisheries Act" as amended.

Subsection 3 of Section 33 of the "Fisheries Act" as enacted on July 15, 1971, states:

> "No person engaged in logging, lumbering, land clearing or other operations shall put, knowingly permit to be put, any slash, stumps or other debris into any water frequented by fish or that flows into such water or on the ice over either such water or at a place where it is likely to be carried into either such water."

Subsection 5 of Section 33 states that:

> "Any person who violates any provision of this section is guilty of an offence and liable under summary conviction to a fine not exceeding $5,000.00 dollars for each offence."

Subsection 7 states:

> "Where an offence under subsection 5 is committed on more than one day or is continued more than one day it shall be deemed to be a separate offence for each day on which the offence is committed or continues."

Subsection 7 states:

> "Where a person is convicted of an offence under this section the Court may in addition to any punishment it may impose order that person to refrain from committing any further such offence and cease to carry on any activities specified in the order, the carry on which in the opinion of the court will, or is likely to result in committing of any further such offence."

Here the accused Company, Federated Co-operative Limited, has entered a plea of "guilty" to this particular charge under Section 33 of the "Fisheries Act." This morning and this afternoon I have heard considerable evidence on the question of the appropriate sentence that should be imposed in this case. After hearing the evidence of Mr. Perrson, the manager, local manager of Federated Co-operative Limited, Salmon Arm, there is no doubt in my mind that there is a considerable economic benefit that is conferred upon the people in this area by the operations of this particular company. However, I am also aware that it appears we have now reached the time that we must decide whether the economic benefit exceeds the damage, the environmental damage that is being caused through these operations that are being conducted by various industries throughout this country.

Unfortunately this problem is a problem that is not that of the court. It's a problem of the Legislator's who are elected by the people of this country to enact legislation, and they must decide what are the appropriate measures that must be taken to cope with this environmental problem as opposed to thw economic difficulties that may be inflicted by the enforcement of these various Acts and regulations.

In this case the Parliament of Canada enacted subsection 3 of Section 33 and they have made it a specific offence for any person engaging in logging to put, or knowingly permit to be put, any slash, stumps or debris into any water frequented by fish. In this case on September the 5th of 1971 it is obvious that Federated Co-operative Limited did put debris into water frequented by fish, namely the Shuswap Lake.

In speaking to mitigation on sentence it was suggested on behalf of the Defendant Company that the resident manager was not aware of Section 33 of the "Fisheries Act". Even accepting this to be a fact, I find it extremely difficult to understand why any person, particularly at the present time when in all the newspapers throughout the country there is continuous hue and cry by environmentalists as to the damage that is being caused to the environment within which we must live--even if Mr. Perrson was not aware of Section 33 I fail to understand why he would not, as a man concerned about our environment,

take some steps or make some effort to find out what the regulations and laws were within which he must operate his business. Ignorance of the law of course is never an excuse.

Here I am concerned with only one particular operation, the operation that occurred on September 5th when this barge was loaded with debris and then subsequently dumped into the Shuswap Lake. I am not concerned with any of the other problems with which the company may be faced regarding the prevention of pollution in this area.

However, I am satisfied on the facts before me that the officers, members of the management/who were responsible for the operation of the company were, or certainly should have been aware of the Federal Statute that had been enacted on July 15, 1970, and yet, perhaps inadvertently and certainly negligently, they knowingly allowed this debris to be hauled into the water and dumped into Shuswap Lake. Because of this prior knowledge I am satisfied that there must and should be a penalty imposed that will serve not only as an objective detterent to other companies who would perhaps negligently operate their business in a similar manner, but also subjectively against Federated Co-operative Limited who have obviously in this case simply ignored the particular law enacted under the "Fisheries Act."

I am therefore going to impose a fine against this company of $3,000.00, and the question of the order to refrain from carrying on an committing any further such offence under subsection 7 of Section 33, it is obvious in this case that if a general order were made that it would be not only injunctive but perhaps prohibitive for the company to carry on their operations. However, in speaking to sentence Counsel for the defendant Company did refer to the distinction between debris, which according to his submission included barks and limbs as opposed to merchantable timber, and I am satisfied that there can and should be an order made in this particular case that the defendant company, Federated Co-operative Limited, should be ordered that they must refrain from dumping debris into the Shuswap Lake, and in order to be more definitive I mean by "debris" to include as defined in Webster's Dictionary, "scattered fragments, wreckage or drift accumulation." And I refer to "dumping" to be a specific pertinent act of dumping rather than something which occurs accidentally or through an act of God over which of course the defendant Company has no control.

I HEREBY CERTIFY [illegible] FOREGOING
TO BE A [illegible] RECORD
OF [illegible]
DON [illegible]
DEPUTY OFFICIAL REPORTER

ALBERTA PROVINCIAL COURT

Rolf Prov. Ct. J.

Regina v. Cardinal River Coals Limited

Environmental law -- Water pollution -- Sentence -- Deposit of deleterious substance in water frequented by fish -- Contamination of creek with coal fines from pit dewatering operation -- Fifteen days charged -- Fine of five hundred dollars per day -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(5).

The accused was convicted of depositing a deleterious substance in water frequented by fish contrary to s. 33(2) of the Fisheries Act. The charges were arose when the company pumped a large quantity of water contaminated with high concentrations of coal fines into a creek which flowed by its open pit mines.

Held, there was a five hundred dollar fine imposed for each of the fifteen days charged. While, on the one hand, the company appeared to be prepared to take considerable risks to keep its mines in operation, on the other, ineffectual communication with the regulatory authorities may have contributed to the problem.

B.D. Patterson, for the Crown.
M.D. MacDonald, for the accused.

April 24, 1972.

IN PROVINCIAL JUDGES' COURT
JUDICIAL DISTRICT OF EDMONTON

REGINA

vs

CARDINAL RIVER COALS LIMITED

J U D G M E N T

Edmonton, Alberta
April 24, 1972

PROCEEDINGS held in Provincial Judges' Court, Municipal Courts Building, Edmonton, Alberta, held on the 24th day of April, A.D. 1972 before Provincial Judge

C. H. ROLF, Q.C.

B. D. PATTERSON, Esq.,.......... Appearing for the Crown,
M. MACDONALD, Esq.,............ Appearing for the Defence,
Doreen J. Happner,............. Student Court Reporter.

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1 THE COURT: You were remanded to today for the fixation of a trial date, gentleman. I understand that there may be an application. Is that correct, Mr. Macdonald?

2 MR. MACDONALD: That is correct, sir.

3 THE COURT: There is a not guilty plea on record?

4 MR. MACDONALD: I am going to apply, then, on behalf of the defendant Cardinal River Coals, to change that plea to guilty.

5 THE COURT: On the application of the accused, through counsel to change the plea from one of not guilty to one of guilty. Record the plea as guilty, please.

What are the circumstances, please Mr. Patterson. May I see that information. There

THE COURT: (cont) are several days alleged aren't there. Now many days are there alleged?

MR. PATTERSON: Fifteen days in all, sir.

THE COURT: Fifteen?

MR. PATTERSON: Yes, Your Honor, if the ...

THE COURT: Yes, I'm listening.

MR. PATTERSON: Might say before opening, sir, that the circumstances here are somewhat involved. It would be proper to refer to the previous hearings as to certain findings, although many similar findings were made in the, in this particular case. I don't think it's necessary to go into the details; those findings are admitted, including the deleterious effect of the substance involved. But you will note on the information, sir, that the information charges a total of 15 days; 6 days in June and 9 days in July. There is an interruption there between the 22nd of June and the 5th of July, which I think, as may have some significance to the Court in considering the circumstances surrounding the committing of the offense and perhaps relative to the appropriate penalty. The investigation commenced on the 17th of June by Mr. Lane as a result of certain informations that he had received relating to the 15th of June. This is when it first came to the attention of the Wildlife Division that

MR. PATTERSON: (cont) the creek was running black, and as a result the Detective asked them why the creek was running black. This, sir, is in the area where the defendant carried on the actual mining, strip mining operation, and it is in an area adjacent to a large strip mining pit, which has a creek affected, Cabin Creek, runs adjacent to this pit, the offense consists of the pumping of quantities of water from the pit on the days set out in the information, indirectly into Cabin Creek. I have some photographs to, in fact, illustrate, if the Court is interested, but in effect the photographs show two six-inch pipes and one ten-inch pipe come from the pit where pumps were mounted in the pit to drain the pit, and the pipes were noted running intermittently from time to time on the days mentioned, and directly into the creek. The findings were that the samples of the water, firstly, from the pipes themselves and then the usual sampling pattern was followed to sample the water as to suspended solids above the point to entry, and when we deal with the over-all picture, this is a tributory creek.

Cabin Creek is a creek that enters into Gregg River, which in turn is the tributory of the MacLeod River, that I think Your Honor is familiar

MR. PATTERSON: (cont) with. That system is from the other creek. The suspended solids in the effluent were recorded on two days. On one day the suspended solids were 78,000 some odd parts. On the other day the suspended solids were 2,005. The, I think, this bears some significance as to the actual quantity of material that entered the creek.

Calculations indicate, sir, that with this volume the pipe I think this is a considerable estimate, the pipe that is capable of discharging 700 gallons per minute, maybe I am wrong. In any event, it was estimated, for the purpose of these calculations, as discharging 500 gallons per minute, and the daily discharge would amount to, sir, I can check my notes on that.

If we take the average of those two figures that are quoted to you, sir, it would be an average discharge of five tons per hour. In rough figures, we get a concentration at the mouth of the Cabin Creek of slightly less than half a ton per hour, so we got the major portion of this coal settling into the creek. We do, there are some significant readings, I think , are of some significance with the parts per million in the Gregg River. We are well over the background level. Parts per

MR. PATTERSON: (cont) million were about one-hundred and, were 180 I believe, sir, and the background level, still, I think, this is something, sir, is in the vicinity of 15 miles below Cabin Creek 7 parts per million, 15 yards above Cabin Creek 2 parts per million.

So, in other words, sir, we have a clean streak. Now, the, I think the time is of some significance. This was done, this fluid was injected in the months of June and July which was the spawning time for the fish that were found in the area; Rainbow Trout and Eastern Brock Trout. The opinion of the investigators in this matter was that the entire length of Cabin Creek would have been completely silted in and would have the effects that Your Honor, I think, is familiar with. Cabin Creek was, prior to this, a spawning ground for fish coming from the larger river, the Gregg River. The information does indicate, too, sir, that this was a, we had the term put before this Court, a typical mountain stream with little or no previous ...

11 THE COURT: With little or no real argument about it this time.

12 MR. PATTERSON: No, this is ... The fauna sampling is, summarized up briefly, they indicate that there were clear water samples above the point of effluent

MR. PATTERSON: (cont.) 158, and 95; just two points above. Below they range from 0 to 15 in June and 0 to 29 in September which, I think, clearly indicates that this part of the fishery was certainly wiped out. The, I think it is of significance, sir, that the problem arose and I am sure my friend is going to make reference to the necessary and uncontrolled causes of the rain, the nature, and the creek that emptied into the pit which created a problem in so far as the continued operation of the mine. In other words, the pit was filled with large, partially filled with large quantities of water which prevented the continued operation of the pit. On that aspect, sir, I think that this was in the spring of '71 that attempts were made to divert a creek which borders the, which in this case is Cabin Creek, which borders the pit. The calvert apparently proved ineffective in that it broke away in part and contributed water to the river bed and this was one of the sources of the water. The, and the other source being the natural rain run-off. I suggest, sir, that this was perhaps something that the company should have anticipated.

The, I am sure my friend is aware of the remedial action that was taken, and point out what this remedial action was. However, it is my informa-

MR. PATTERSON: (cont) tion that the remedial action took place the following the 20, the last day mention - in the charge; I believe the 18th of July. It is my information it was on the 22nd or thereabouts. The action being to pump the water into another mine work and thereby avoid the water entering direct.

13 THE COURT: I remember a phrase from the Plant Manager, the Works Manager, in the last trial was they were having quite a time with Cabin Creek.

14 MR. PATTERSON: Yes, sir.

15 THE COURT: This is one of the reasons or the uses they had for the Luscar Creek.

16 MR. PATTERSON: Yes, I agree with the Court, and this is the, and I understand and following this, of course, very extensive and costly procedures are now being planned or are in the process of being carried out. However, I think it is of some significance that this matter apparently was avoided by, and was finally culminated by the pumping of the water down into the old mine shaft. And I have, or my people have no information to what that might have cost, in any case it was done. But it was not done until ...

17 THE COURT: But your principles are satisfied from their investigations and so forth that the company is, in fact, carrying out the extensive

THE COURT: (cont) operations in order to remedy the situations, are they?

18 MR. PATTERSON: Yes. There is no information to the contrary, sir, and the information is that, of course, following the date mentioned in the charge there was no further, or recurrence of this offense. No more water was pumped into the creek. However, I mentioned earlier, sir, that as you will see from the information there is a break in the times. Now, what my principles advise is that during that period the 17th to the 23rd, the entire situation was investigated. Contact was made with the management, including the Manager, the Superintendant, the Engineer, and the proplem was discussed and I think, at least the inference I get, is that it was concluded at that time, - alright, they were fully aware of this, that there would be no further recurrence and as a result, the Division took no, made no further investigation at that time, assuming that it had been brought home. But to their surprise they learned later on in July, information was brought to their attention that in the early parts of July that there was a recurrence and they, of course, went out and investigated and that's where we find the date the 5th of July and following, when exactly the same thing was going on as had occurred earlier.

MR. PATTERSON: (cont) And, which I think is perhaps the Court could also draw conclusions from that.

19 THE COURT: Is there anything you wish to say, Mr. Macdonald, or I am sorry, have you ...

20 MR. PATTERSON: Perhaps there is just one more other thing. I think that it is clear that the authority under which the defendant operated was an order from the Department of the Provincial Board of Health which, in fact, said that no run-off should enter any bodies of water. I appreciate that this might well have been possible to comply with. However, there does not appear to have been any liaison between the defendant company prior to this problem arising to perhaps either have that order remanded or give some relief or to discuss the possible alternate procedures.

The only other thing, the other thing I would like to refer to, sir, there are, there are cases on this which, I think I sited to Your Honor at the last hearing. However, we were dealing with the question of finding whether or not it was guilt or innocence, and no particular reference was made to the penalty imposed. I suggest, sir, that the cases may be of some direction as to guidance to the taking into consideration by the Court. I note the cases I am summarizing are these, sir. There is the

MR. PATTERSON: (cont) Churchill Copper case. It is a case from a different type of situation.

21 THE COURT: Is that the Salmon River case?

22 MR. PATTERSON: This was the river in NorthernB.C.

23 THE COURT: Yes.

24 MR. PATTERSON: There was one they, were charged with one day, a maximum fine of $5000 was imposed. There was the, I got it marked as the Barrie case in the City of Barrie, pollution of Lake Erie. It was under a different Act, sir, however this involved diverting sewage. The maximum penalty $5000 was imposed in that particular case. There is, in Alberta, the decision of British American Oil which was a decision prior to the change in the increase of the penalty. In that case there was one day effluent. Maximum fine $1000; former Judge of this Court, Judge Stilwell. There is the case of Crown Zellerback, a case involving slashings from a logging operation entering the river and having a deleterious effect. Three days in that case. There was a fine of $4000 for three days imposed. Kamloops Pulp and Paper involved a river tributory to the North Thompson, a salmon spawning area. In this case, it was a mud slide that affected the spawning beds. The mud had entered the creek for a period of two days. The

MR. PATTERSON: (cont) Court in that case imposed a penalty of $2500 for each day, or $5000. A recent case unreported, but in the Court here in Edmonton involving an oil company ...

25 THE COURT: $1000. I am familiar with that.

26 MR. PATTERSON: Your Honor is familiar with that. I don't have any particular comment as to what the penalty should be. I feel, sir, that is a matter for the Court. The circumstances of the case which I think may have some application are before Your Honor as to the matter of sentencing.

27 THE COURT: Thank you, Mr. Patterson. Mr. Macdonald, have you anything to say with respect to the company?

28 MR. MACDONALD: With respect to penalty, Your Honor?

29 THE COURT: Well, whatever you have to say.

30 MR. MACDONALD: Might say that my friend has given a fair description as to how the events arose out of which the charge was by. I add one thing to that, though. He says there is a lack of communication between the two parties. I suppose that is obvious from the nature of the circumstances of the events. I would like to add from the point of view of the company, that the original calvert that gave way and shown in those photographs; photographs 1, 2 and 3 are the calvert, photograph 4 and 5, sir, show it in

MR. MACDONALD: (cont) its end conclusion in June of 1971, after it has given way. We requested permission to build that calvert to diverse the creek around the end a 50 feet deep pit in the fall of 1970 which was by my information is in September. Permission was granted in December which necessitated our building a diversion creek in the winter time. I think that was our undoing, if I can put it that way, sir.

It wasn't, I don't think I have an Act to God situation, because I don't think our calverts stand the test of good, good, good engineering practises. But, in any event, this came upon us, and that's this one thing that the practical company problem. The second thing is that my friend said in relation to the alternate pumping route which was eventually established and which are shown in this folder right from the pit, up the hill, along the hill, and now, pumps in the underground works. You must realize, Your Honor, that when we did pump them into the underground workings, we did so with permission. Everything we do up there is with permission of the Government, and we did it almost as soon as possible, and we didn't have permission to pump into the underground works until about July of 1971. I

MR. MACDONALD: (cont) might qualify that by saying that we probably got the permission in May or June of '71, but we didn't get the system into operation until 70, until July 20th of '71. What I am saying, sir, is that everything we do up there is with permission. Everything, and therefore, to each reaction there is a reaction, and hence we have used an alternate form, but, I think my learned friend might say to you in countering that, "Remember the position of the Government. They weren't sure what would happen if we did pump into the underground workings."

They were scared that it might eventually get into a river somewheres else. And these things have to be tested. That's why there was delay in getting an alternate course. Now, one further thing, that I want to show you, Your Honor. In arriving at this decision, I would like to treat both charges, the one that has been subject matter of a trial, and this charge as the one. I think I can say to the Court without any reservation at all that the cost to this company as a result of the problems that arose last June are in the area of $200,000. The document that I have just given you relates primarily to a request by the Government made to the company in October or the Fall of 1971, asking the, asking the

MR. MACDONALD: (cont) company, the Government asked the company what they proposed to do with run-off problems in the area of Cabin and Lusear Creeks. You can see the proposal that was made there, it's $110,000. Now that's an estimate by the consulting firm, that is contained on page 6 of the document. My people inform me, my, the company informs me, sir, that they hope that they can have a substantial run at that cost figure and I hope to reduce it by as much as one-third. So a true picture is $60 to $70,000 in that, in that area. Now, added to that must be the cost of the pumping system that has been set up in the two photographic folders that I showed Your Honor. My information is to the effect that this cost in the area of $40,000. I think the Court could quite properly say to me, "All of these things perhaps should have been done in the first place." It may well be true, but I would like to take the position before the Court that we are hand in glove with the Government in everything we do. Everything we do up there, we must receive permission from the Government. My learned friend did not, or one thing he neglected to mention, in relation to the suspended solids that were imposed upon this creek. Again, I think that he will agree with me as was admitted in the last trial; no toxicity

MR. MACDONALD: (cont) to fish; somewhat obvious of the resulting of disturbances to this stream. I think it's also fair for me to comment, Your Honor, on the fact that if the company is allowed to proceed in, proceed as originally applied, applied for by the company with their mines in operation, they will probably mine and in effect obliterate a substantial portion of Cabin Creek which my learned friend says that we have damaged in June. I am suggesting to you, sir, that any clear view of our mining proposal at the time we went into that area, contemplated extensive mining in the length of Cabin Creek, and extensive workings because Cabin Creek goes right over one of the coals, see. I suggest that to you not because we are flagrant, not because we are in any way high handed, but it was clearly within the scope of our procedures. I hope that the Court will not intercede at this point in an attempt to, attempt to lay down a regulation as to whether or not we can or cannot do something. I would ask the Court to take judicial notice of the fact that, that the Environment Conservation Board in this Province has in December and January of 1971 and 1972, January 1972, held public hearings throughout this Province on the question of strip mining in the Province of Alberta and

MR. MACDONALD: (cont) the, if I can be allowed to digress for a moment; one of the big questions that I think would be before that Board involved really two things.

There is one theory that is called the Theory of Replacement which means that the coal company has to replace the actual grade levels of what they found before they went in there. And the other theory is what I call the Area Theory which means that the coal company should be allowed to do what they want within an area of the earth. Apply for mine lease. And they should do this with impunity so long as they comply with the reclamation standards, that the Government will set up. Now, these standards have not been set up, they have not as yet been proposed, and they are in the area of being set up. I suggest that the Government has in that regard, sir, a great deal of hold upon the company in relation to what they do in a given area. And, I am not sure that we are violating these standards because there are no standards, there are no standards set up. I simply say that to the Court to remind the Court that I don't think the deterrent aspect of this claim is an important one because we are very closely locked in with the Government, and the company must abide by

MR. MACDONALD: (cont) those regulations as proclaimed by the Government. I am sure that this will be the subject matter of an on-going debate and I am sure that we will abide by those rules and regulations. I would therefore like to say in summation that we, I would like, I would ask for it, to treat the matter as two offenses. My learned friend has said that we pumped on an intermittent basis, the basis over a period of time, and I agree. But, when I say two offenses, I mean the offenses which the Court has already dealt with in relation to Luscar Creek and another offense in relation to Cabin Creek.

Because it is, in effect, one problem created by one set of circumstances and in carrying on the mining operation which we were prevented from doing, the mine was closed from June the 5th to June the 9th. There was, I don't want to be inferior. There were three or four, there were two pits in operation at the time. I think the contemplation now is three or four. So one pit was closed, sir, I don't mean the mine completely closed up, but a substantial portion of the work force of the mine was affected. I am not saying that the whole mine was closed. And in this regard, I would say one set of circumstances, one set of events that has caused

MR. MACDONALD: (cont) the problem and I think Your Honor's fine in the previous case as a total fine in relation to those circumstances should be the same in this case. I'm not saying Your Honor's fine in the previous case in relation to each count of this case, sir. I'm saying Your Honor's fine in the previous case related all the circumstances in this case. The Court may not feel that this is warranted. I would like to say that from the point of view of the company that we have ...

31 THE COURT: Really, what you're saying is that there are two offenses that occurred here, and if I impose a $2500 fine in each and make them actually $5000; although there are several ways of getting at something like that.

32 MR. MACDONALD: The arithmetic is pretty simple; you divide by the number of counts and that's the number you get, sir, in light of the circumstances.

33 THE COURT: Anything else?

Well gentlemen, in this particular instance I can fully appreciate what the difficulties have been with respect to the Crown, and I believe I am fully aware of the difficulties/you are faced with, or that the company has been faced with. I am most interested in the suggestion that the standard has not, in fact,

THE COURT: (cont) been promulgated or arrived at, and as you have pointed out will be subject to a great deal of debate and dialogue.

There were some attitudes which came, became very clear in the previous trial which I believe are pertinent to this particular proceeding before the Court today. One is that the company, in desperation, was prepared to sacrifice anything to keep going and the other thing is, of course, that the company and the Department of the Environment or the Environmental Conservation Board were not in that a close communication once this operation actually went ahead. The maximum penalty is $500 or $5000, I should say, per day of offense which would make $750,000 maximum penalty available to the Court in this particular instance. In addition to this, there could be an order actually closing down their works until such time as they were to be operated in a fashion suitable and acceptable to the Department of the Environment or the Government, in a bread term. There are 15 days involved in this matter. I like your argument, Mr. Macdonald, however I am afraid I cannot quite accedeto it. Under the circumstances, the penalty will be $500 per day, which makes a total of $7,500. In default of payment - enforcement. And

THE COURT: (cont) for exactly the same reasons as I stated in the last trial, I will not make an order with respect to the operation or the remedying of the company's works because I am satisfied that that the company is fully aware of the situation at this time and is taking active and concrete, and expensive steps in order to comply with the requirements of the Government at this time and to work hand in glove with them. I trust for the future operation of this mining venture, to the benefit of the company and to the benefit of the Government and the people involved. How long will you require to get that money, Mr. Macdonald?

34 MR. MACDONALD: Friday will be fine, sir.

35 THE COURT: I will give you until the 15th of May, then - time to pay.

36 MR. MACDONALD: Thank you.

37 THE COURT: The only order then with respect to the company will be that they co-operate with the Department of the Environment. Thank you very much, gentlemen.

FROM TAPED PROCEEDINGS

Certificate

Certified a correct transcript,

Doreen J. Heppner
Student Court Reporter

Edmonton, Alberta
May 4, 1972
/3

BRITISH COLUMBIA PROVINCIAL COURT

Ward Prov. Ct. J.

Regina v. Columbia Cellulose Co. Ltd.

Environmental law -- Water pollution -- Sentence -- Deposit of deleterious substance in water frequented by fish -- Company continued to operate pulp mill despite failure in waste disposal system -- Fish kill resulted -- Circumstances mitigating sentence -- Fifteen hundred dollar fine -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(5).

The accused pleaded guilty to a charge of depositing a deleterious substance in water frequented by fish. Due to a failure in its waste disposal system, the company had diverted effluent from one disposal site to another, and a large fish kill resulted.

Held, the appropriate fine was fifteen hundred dollars even though the offence was one of absolute liability. While it was an error in judgement on the part of the company not to cease operations when the waste system failed, nonetheless there was no evidence that the company acted with knowledge of or with a reckless disregard for the consequences. Moreover, enforcement action had only been taken recently even though the statutory prohibition in question had been in force for many years.

The Queen v. Pierce Fisheries Ltd., [1971] S.C.R. 5; refd to.

R. Allan Gould, for the Crown.
D.G. Waddell, for the accused.

November 11, 1972.

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
HOLDEN AT PRINCE RUPERT

BEFORE HIS HONOUR JUDGE D.W.S. WARD
PROVINCIAL COURT JUDGE

REGINA VS. COLUMBIA CELLULOSE CO. LTD.
SECTION 33 (2) FISHERIES ACT
ON THE 10th and 11th OF NOVEMBER, 1972

FOR THE PROSECUTION: R. ALLAN GOULD, ESQ.
FOR THE DEFENCE: D.G. WADDELL, ESQ.
REPORTER: JEAN MURDOCH

NOVEMBER 11th, 1972

JUDGE'S DECISION

The Defendant corporation has pleaded guilty to an offence under Section 33(2) Fisheries Act, being RSC 1970 c F-14 as amended by RSC 1st Supplement c 17. The particulars allege that the defendant corporation:

> "on or about the 13th day of October A.D. 1972, did unlawfully deposit a deleterious substance in water frequented by fish, to wit: Wainwright Basin, County of Prince Rupert, Province of British Columbia".

The evidence of the Crown as to the facts and the Defence in mitigation established that at 10:50 p.m. 12 October 1972, the discharge of waste from the Sulphide Mill, commonly known as "Red Liquor", through a pipe from the Mill under Porpoise Harbour and across Ridley Island into Chatham Sound was interrupted by a failure of the pump in this effluent system. The pump stopped first as a result of a power failure but when power was restored half an hour later, the pump failed to restart and it was found that the impellor and shaft had been so damaged that they needed replacing. A decision was made at this time not to shut the Sulphide Mill down but to divert the effluent through the sewer system and into Lagoon 1 where it eventually drained through Lagoon 2 into Wainwright Basin and Porpoise Harbour.

The decision not to shut the Mill down was taken because it would have taken 4-5 hours to have cleared the effluent lines and normally the pump could have been repaired in this time. In fact, it took until 4 p.m. the next day, some 17 hours, before the repair was effected, because certain spare parts were not available, and during the whole of this time the effluent had been thus diverted for as long as a week without affecting fish but on this occasion, the situation had been aggravated by the abnormally small tidal fluctuation which diminished the flushing action of the tide.

On 19 October 1972, however, Mr. Freeman, an experienced Fisheries Officer, found dead fish, mostly herring, around the floats on Porpoise Harbour adjacent to the Mill, and around the shores of both Porpoise Harbour and Wainwright Basin. He estimated their numbers to be "many thousands." Subsequently, Mr. Webster, a qualified engineer with the Environmental Protection Service of the Department of the Environment, took samples of the water in Porpoise Harbour and Wainwright Basin on 20, 21, 22 and 23rd of October and found Dissolved Oxygen content to be less than 2 mgs./litre and sometimes less than 1 mg./litre. He explained that the so-called "Red Liquor" waste from the Sulphide Mill is composed mainly of carbo-hydrates which deplete the dissolved oxygen in water through bacterial action. The minimum amount of dissolved oxygen in water to sustain fish is considered by the Department to be 5 mgs./litre although some observers think 3-4 mgs. sufficient and there have been records of 2 mgs. but not less.

The Pulp and Paper Effluent Regulations P.C. 1971-2281, which came into force on 2 November 1971, provide for certain standards of bio-chemical oxygen demand for effluents from Pulp Mills and if these standards are met, they constitute a defence to an offence under s 33(2) of the Fisheries Act. However, these regulations do not yet apply to the Defendant's Mill and according to Mr. Webster, the effluent from the Mill at present falls short of a standard acceptable to his Department.

The Defence adduced evidence through Dr. Edward Becker, a forest products pollution expert, a former employee of the Defendant Company and now its consultant, that since January 1971, the Company had spent some $1,275,000.00 in improving the effluent system from the Sulphide Mill. Before these measures were taken, the dissolved oxygen level in Wainwright Basin was 0-2 mgs./litre. The effluent system is working approximately 95% of the time which is a normal standard of reliability for pulp mill equipment. Often the disruption of the effluent system is beyond the Company's control and he cited incidents when the pipe under Porpoise Harbour had been damaged by an object dragged across the line and by the wash from a ship manoeuvering in the harbour. The Company had carried out continuous toxicity and dissolved oxygen tests and had kept the Environmental Protection Service advised of the tests and of its overall plan for effluent control. Mr. Kreut, the technical manager of the Company, stated that since the incident leading to this charge, leaks were found in the pipe under Porpoise Harbour from which approximately 25% of the effluent was escaping. The Mill was subsequently shut down for 18 hours to carry out further repairs whereby 24 hours production was lost and the Mill was again closed on 8 November and remains closed at the present time. As a result, the Company had lost some $110,000.00 in production and spent $10,000.00 in repairs. Further, some 90-95 employees had lost $16,000.00 in wages.

On these facts the Crown urges me, in view of a previous conviction under this section on 3 September 1970, when the Company was fined $3000.00, to impose the maximum penalty of $5000.00 provided under s 33(5) but requests that I do not exercise any of the powers conferred on the Court by ss (7).

The assessment of the penalty in these circumstances must be viewed against the sociological and political background of today. The protection of our environment has become, rightly in my opinion, one of the most urgent demands of society and this demand is increasingly reflected in environmental legislation. Society today is no longer prepared to suffer pollution for purely economic reasons. However, the new legislation must be fairly applied and above all the Courts must resist their being used for political purposes and demonstrate their traditional independence.

Sec. 33(2) Fisheries Act has been in force for many years but it was not invoked against the Company until the section was amended in 1970 and the penalties considerably increased. Presumably, the pollution from the Mill up to that time was tolerated by the community and condoned by the Fisheries Service for economic considerations.

Since its conviction in September 1970, the Company has improved the standard of the effluent and cooperated with the Department of the Environment in trying to achieve acceptable levels. This has not yet been accomplished to the satisfaction of the Fisheries Service but it seems obvious to me that before this incident, fish were able to exist in Porpoise Harbour and Wainwright Basin in large numbers in view of the evidence of Mr. Freeman as to the number of fish killed and their location.

In my opinion, it was an error in judgement on the part of the Company in not closing down the plant when the pump failed. Further, as the pump was essential to the continued operation of the effluent system, the Company should have made certain that in the event of its failure, its repair could be effected promptly. But, considering the circumstances as a whole, there was no evidence that the Company acted with the knowledge, or with a reckless disregard, that the effluent diversion would cause such a massive fish kill.

I cannot find, therefore, that the Defendant's liability for this offence, absolute as it is by virtue of the decision of the Supreme Court of Canada, in the Queen v Pierce Fisheries Ltd. (1971) SCR 5, warrants the maximum fine demanded by the Crown. In my opinion a fine of $1500.00 will meet the ends of justice and I so fine the Defendant Corporation.

D. Ward
....
D.W.S. WARD
Provincial Court Judge

NORTHWEST TERRITORIES MAGISTRATE'S COURT

Smith Mag.

Regina v. Giant Yellowknife Mines Limited

Environmental law -- Water pollution -- Sentence -- Deposit of deleterious substance in water frequented by fish -- Breach of tailings dam resulting in spill of highly toxic wastes onto ice covering nearby watercourse -- Accused taking adequate remedial measures -- Two thousand dollar fine -- Fisheries Act, R.S.C. 1970, c. F-14, ss. 33(2), 33(5).

The corporation was found guilty of violating s. 33(2) of the Fisheries Act after a breach in the dyke surrounding its tailings disposal area caused the release of a large quantity of highly toxic effluent onto the ice covering Yellowknife Bay.

Held, the appropriate fine was two thousand dollars. The company was taking adequate remedial measures involving the expenditure of large sums of money, and accordingly, the objective of deterrence could be achieved by imposition of less than the maximum penalty.

O.J.T. Troy, Q.C., for the Crown.
D.H. Searle, Q.C., for the accused.

February 24, 1975.

191/75 (S)

IN THE MAGISTRATE'S COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

GIANT YELLOWKNIFE MINES LIMITED

HEARD BEFORE:

His Worship, Magistrate F. G. Smith, Q.C.
sitting in the Court House, in the City
of Yellowknife, N.W.T. on Monday,
February 24, 1975.

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PORTION OF TRIAL PROCEEDINGS

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APPEARANCES:

O. J. T. Troy, Esq., Q.C.	For the Crown
D. H. Searle, Esq., Q.C.	For the Defence.

C. Adams,
Court Clerk.

THE COURT: Well, Mr. Troy, have you any comments as to sentence?

MR. TROY: Sir, I'd like to point out to you the punishment section which is found on page 2 of Chapter 17, First Supplement --

"Any person who violates any provision of this Section is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars for each offence."

THE COURT: And the offence is one day --

MR. TROY: One day here, Sir. I this was a matter of several days, the next Section allows for --

THE COURT: An offence for each day?

MR. TROY: Deemed to be an offence for each day, up to five thousand dollars for each day. I would like to point out to the Court, but I am not seriously asking the Court to consider putting it into operation - but this legislation was considered so serious that power has been given to the Court under Subsection 7 --

"Where a person is convicted of an offence under this Section the Court may, in addition to any punishment, it may order that person to refrain from committing any further such offences, or to cause to carry on any activity specified in the order, the carrying on of which in the opinion of the Court will, or is likely to result in the committing of any further such offence."

I just point that out to show how serious this matter is, and I am not asking that the Court invoke that Section on a first offence. This is the first offence for this Company, and I do wish to point out the principles that have been established in respect to penalties that have been imposed for what I suppose we call Environmental Pollution Control Legislation by the Government.

I would like, Sir, to point out that in the original Revised Statutes text, although it was a different offence, under Chapter F.14, Revised Statutes of Canada, I'd like to refer you to Section 33 (2), and this was 1970, printed by the Queen's Printer, but Section 33 (2) -- if you look at Section 33 on page 11 - 12 of Chapter F. 14, and look at the bottom of Subsection 5, you will notice that Section 33 has been in existence since 1960-61, Chapter 23, Section 4, and at that time when the Revised Statutes came out - Section 33 (2) at that time was an analogous section to the one that is now in effect, and that one states --

"No person shall cause or knowingly permit to pass into, or knowingly permit to be put any lime, chemical substance, or drugs, poisonous matters, dead or decayed fish or remnants thereof, mill rubbish or sawdust, or any other deleterious substance or thing, whether the same is of a like character to the substance named in this section or not, in any water frequented by fish, or the closing of such water, or on ice over either of such waters."

Now, that is a little different offence than the present one, but at that time the offence section said --

"Every person who violates any provision of this Section is guilty of an offence and is liable upon summary conviction for the first offence to a fine of not less than a hundred dollars and not more than a thousand dollars, or imprisonment for a term of not less than one month and not more than six months, or both such fine and imprisonment; and for a second and each subsequent offence to a fine of not less than three hundred dollars and not more than two thousand dollars, or a term of imprisonment for a term of not less than two months or not more than twelve months, or both such fine and imprisonment."

And that was amended, Sir, in Chapter 17, First Supplement, and the present Section which I read out earlier in these proceedings, Section 33, Subsection 2, which was found on page 661, Chapter 17, First Supplement -- it's the very first page in the book --but the punishment section now since these amendments to this Act, to amend the Fisheries Act, 1969-70, Chapter 63 - the punishment section there, Sir, now is changed. The Crown is taking a much severer look at this type of penalties. The penalty is somewhat different than the one before the amendment. Now it reads --

"No person shall deposit or permit the deposit of deleterious substances under any conditions where such deleterious substance may enter waters frequented by fish."

Now, the penalty section now is - any person who violates any provision of this section is guilty of an offence and liable on summary conviction, as Mr. Searle pointed out, to a fine of five thousand dollars.

Now, the first type of case we had in the North with ice involved in and which the Supreme Court of the Northwest Territories became involved in, was not quite an environmental or protection legislation, in that it involved the industrial storage of dynamite and explosives which a company had stored on an island in the Mackenzie Delta, and in that particular case - which was appealed by the Crown - and that was the case of the Queen vs Pat McNulty Limited, and they were charged under the Explosives Act of unlawfully failing to comply with the directions made in pursuance to the provisions of the Explosives Act in regard to storage; and then there was a second count in regards to unlawfully storing explosives, that is - twenty-six hundred cases of dynamo-hydro mix --it's an explosive, in an unlicenced magazine, contrary to the regulations.

Now, Mr. Justice Morrow -- that case was appealed, because in the lower Court the Court saw fit at Fort Good Hope - and the Court at that time was Chief Magistrate Parker as he then was, I believe - that was in 1971, March 1971 - on a plea of guilty Magistrate Parker

saw fit to fine twenty-five dollars and Count number one and fifty dollars on Count number two.

Now, the Crown appealed, and Mr. Justice Morrow increased the penalty. I am not too sure what the maximum penalty was, but it was certainly more than twenty-five or fifty dollars, and Mr. Justice Morrow pointed out in that case --

"It is quite true the accused respondent here, which was an admitted expert in explosives and the handling of explosives, took immediate remedial action after they were given the order by the inspector when some time had elapsed, by putting a full time watchman on the site. It was suggested by the Counsel, and I accept the suggestion, that it was better than the regulation itself. However, if that is so, I would have expected such an experienced company to put a watchman there at the very beginning. So, if anything, it probably emphasizes the danger that was inherent in the explosives being left the way they were, and is a clear breach of the regulation under this Act.

It seems to me we hear a lot from the press and in the newspapers and television and so on about the ecology of the North, and all that type of thing, and how it must be protected; and yet, despite that, it seems to me as I travel around the Country, the corporations from Eastern Canada and the United States show almost total disregard of this situation. They almost show contempt for the Country, as if they think we are wild aborigines wandering around from camp to camp, with the way they handle it.

The area where this explosive was located was a very active area. Right now there ships going by; there are barges going by. This summer, and I am sure if we were to examine last year, you would take it as quite common to see barges going up and down that area. I would find it difficult to understand that such an experienced corporation would be in such contempt of the regulations.

Accordingly, with reluctance, I have reached the conclusion that the penalties as charged are inadequate. I am allowing the Crown's appeal in respect of each of the charges. On number one, the fine will be increased to three hundred dollars, and on number two it will be increased to one hundred dollars.

There will be a direction that the explosives that have been impounded will be available to the respondent Company for immediate disposal, and if the Company fails within a reasonable time to take the proper steps, there will be a direction that the police will take it in hand and dispose of it, and any expenses incurred will be charged as an additional fine on Count number one against the Corporation. There will be no costs added."

Now, in that particular case the reason for the appeal by the Crown was that the fines were inadequate and were too lenient and out of proportion to the severity

of the penalty provided by the law, and that the learned Chief Magistrate failed to give adequate consideration to the deterrent effect of the imposition of punishment to these offences, having regard to the circumstances existing in the Northwest Territories.

Now, the next case was R. vs Kenniston Drilling and this was a case that was heard before a Justice of the Peace in Inuvik, and Kenniston Drilling was charged under the Territorial Land Use Act for unlawfully conducting a land use operation in a land management zone without a land use permit. In other words, they moved equipment across the Tundra contrary -- without a permit, and of course, there's laws that say this can't be done without a proper permit and without obeying the regulations of the Territorial Land Use Act, and the Territorial Land Use Act itself, and in that particular case in the original instance the Justice of the Peace, Mr. Barney McNeil, fined this Company one hundred dollars and costs of four dollars, and that was on a guilty plea.

It had been pointed out to him at that time that the maximum penalty for that offence would be five thousand dollars for each day that the offence was committed. This offence only occurred on the one day.

Now, Mr. Justice Morrow, on appeal, laid down some principles in respect to these types of environmental precautions and the principles regarding sentencing, and in his judgment which was brought down at Inuvik on May 9, 1973, Mr. Malcolm McConnell was acting for the appellant, and the Crown - I was acting on behalf of the Crown -- Mr. Justice Morrow pointed out in the Inuvik appeal the main concern expressed by the Crown is to bear in mind the existing circumstances in the Northwest Territories, and the sentence of the Court did not give sufficient consideration to the deterrent effect.

And then I should point out to you -- I pointed out, Sir, what were the facts in respect of the violation. I am not going to go into those facts in detail, but there was a violation of the Territorial Lands Act, Section 3.3, Subsection 1, which provides for a penalty of five thousand dollars; and then again, the same is in the Fisheries Act, for each day, and it's similar environmental protection legislation.

He points out that it would be readily seen -- after reviewing the legislation Mr. Justice Morrow pointed out --

"It can be readily seen from the above that, except in the case of an emergency that threatens life and property, in Regulation 17, Subsection 2, there is a full prohibition against land use operators.

There is no suggestion that the present appeal came within the Section. The problem posed by the appeal is as to whether in this type of case a marginal fine should

be allowed to stand when the Parliament of Canada has by Section 3.3 (2) made each day the offence continued a separate offence.

It is correct to say that in the present appeal one day only is involved, but Crown Counsel argues that to, in effect, place a possible fine of five thousand dollars per day shows a serious view taken by Parliament.

Counsel has been unable to cite any reported cases that can be said to bear directly on the subject. I am not unaware of the general principles that should be considered in sentencing for the commission of the crime. It is my opinion the offence is such as is provided for in the present legislation and requires, perhaps, a spécial approach. I would be remiss as a Judge in this Territory if I did not take notice of the need and purpose of the present legislation to protect and control the use of the surface of the land -- the land which, although tundra of nature and frozen over for many months each year, is nonetheless a delicate land, easily damaged, but once damaged impossible to repair. This is without any mention of possible use that our original inhabitants - in this case Eskimo, may still be making of it, and how their way of life may be still dependant on its being preserved in its natural state.

It may very well be that in the present case no actual damage took place, but surely the test to apply in approaching the question of sentence should be less a concern of what the damage was, but more a concern of what the damage might have been.

In cases of this kind, to fine a Corporation such as the present one a mere one hundred dollars is to, in effect, invite breaches, to invite the gamble. Where incoming rewards are big enough the persons or corporations will only be encouraged to take what might be termed a calculated risk.

It seems to me that the Court should deal with this type of offence with resolution -- should stress the deterrent with a high cost, in the hope a chance will not be taken because it is too costly.

Keeping in mind the good record of the present respondent, but applying the above principles, I allow the Crown's appeal and fine the Kenniston Drilling the sum of two thousand dollars. The Company will have thirty days in which to pay."

Now, that was driving an automobile without a permit across the Tundra after the closing season.

Now, Sir, Mr. Searle mentioned Pan Arctic is a Company that is 45 per cent owned by the Government, but it is a private Corporation, and many large Corporations in Canada hold an interest and shares in that Company, so it's not only a Government Corporation, but the whole mining industry is involved in many aspects of that operation and

have many representatives on the Board of Directors.

Now, in the Pan Arctic case they were charged with failing to comply with a condition of one of their land use permits, and that was in respect to the retention of drilling effluent from a drilling site and it spilled over from a sump and went down over a hill into a gully and into water.

Now, that case took place on November 16, 1973, and there was a guilty plea in respect to one day, and that was the day when the Land Use Inspectors arrived there and saw the spill. The whole operation was almost completely over at that time and they were fined three thousand dollars. It was very high up in the Arctic, that particular spill.

That one was done before Chief Magistrate Parker.

Then there was another -- there's one in respect to Gulf Oil, and that was in respect to failing to comply with an operating condition in respect to not maintaining -- well, it says - "Sumps and pits constructed in such a manner that fluids contained therein cannot spread to surrounding land."

Now, that is similar to this situation, but it's a violation of the permit, rather than having the material reach the waters frequented by fish.

Now, on March 22, 1974, there was a plea of guilty and this Company was find twenty-five hundred dollars.

On that matter I don't know whether that was before a Magistrate or before -- I think it was before Mr. Justice Morrow sitting as a Magistrate, wasn't it?

MR. SEARLE: Yes.

MR. TROY: There was a big legal argument involved in this matter, as the one charge was a nullity, but that is irrelevant to my argument here today.

But then the last one, Sir, was a charge against Elf Oil, and that one was before Magistrate Parker, and that was on April 29, 1974, and this was in relation -- this was under the Fisheries Act, the same Section we are dealing with here, and this was unlawfully permitting the deposit of deleterious substance in a place where it did enter water frequented by fish.

This was in the MacKenzie Delta, and Elf had taken over a fuel site, and had brought in their storage tanks, and unfortunately one of these big tanks burst or leaked, and there was quite a leakage that went down into water that was frequented by fish, and there was a tremendous effort made by Elf to correct the situation, and the due diligence exception was raised in this case as a defence, and Magistrate Parker, after hearing the facts, saw fit in his judgment of the facts that he couldn't find the Company exercised due diligence to prevent the pollution, and his

opinion on the facts of this case was that the diligence was after the event, rather than before.

MR. SEARLE: Mind you, I disagree with his view. I represented the Company at the time.

MR. TROY: In any case, Counsel didn't see fit to appeal, so there was no question by either Counsel for the Crown or the enforcement officers, the Defence or by anyone that Elf Oil wasn't a good corporate citizen. In fact there was no question in relation to Gulf Oil or the Kenniston Drilling one, and there's no question that Giant isn't trying to be a good corporate citizen, but I submit that is not the issue. The legislation has nothing to do with whether you are a good corporate citizen or not, or whether you are taking or making amends after the fact.

The important thing is that this type of thing cannot be allowed, and Parliament saw fit to make appropriate legislation.

Now, Magistrate Parker in the Elf Oil case made some comments in connection with the penalty, and said the penalty as mentioned of five thousand dollars did not actually --"in infractions of this type I believe the maximum penalty is really too low"; and there was no question in that case that Elf Oil had spent a considerable amount of money cleaning up.

MR. SEARLE: Forty thousand dollars as I recall.

MR. TROY: It was a lot of money, but it wasn't as big a leak, a seepage. It was only a fuel tank -- old fuel tanks stored there, and they had taken over that site from some other Company, but then he goes on to say --

"It is only the one case. Certainly these people - although in my view they made a poor decision by getting in there, that is in regards to storing in there - they cooperated, and I was impressed by the way they gave their evidence, and I felt that the witnesses for the Company were very fair."

So in that case he imposed a fine of two thousand dollars, but that was in a place, Sir, that was out in the Delta where drilling operations were going on. It was not in a heavily populated area, and these particular laws were in force for five years; and you have here both sides of the story today, and I think it has been quite fairly presented by both sides; and the Crown takes the position in this case that, because of the serious toxicity of the deleterious substance that did get into Yellowknife Bay, that the Court should consider in the circumstances of this case to impose the maximum penalty of five thousand dollars.

MR. SEARLE: Your Worship, just two seconds -- two seconds --

I am not so sure -- my memory doesn't serve me very well, but I am not so sure the Crown didn't take that view in some of the other cases as well, in that it is

up to the Court to decide what the appropriate punishment might be.

The only thing that we have to say is that the Kenniston case showed a fine of two thousand dollars, Pan Arctic - three; Gulf twenty-five hundred and Elf - two thousand. They were all under either the same or similar legislation, with the identical maximum of five thousand dollars per day, so they're all, we submit, very good and recent guidelines for the Court.

The reason the Elf fine of two thousand dollars was lower than the others was because of the time and trouble and effort they obviously spent in cleaning up the oil spill and the expenditure, as I recall it, having been Counsel in that case for Elf, was something, I believe, in the nature of forty-five thousand dollars. Now, I am using my memory, but I am relatively sure that that's what it was.

MR. TROY: It was something like that, Your Worship.

MR. SEARLE: In this case, I submit that you have virtually the same situation. Admittedly the spill on the ice may here have been larger, but so, too, of course, was the expenditure by an additional twenty thousand dollars just in clean-up, followed immediately, of course, by the one hundred and eighty-five thousand dollars in improving dikes and what you have heard; and this year a further sum earmarked in the neighbourhood of five hundred and fifty --

six fifty. With those sums of money, surely the Court is satisfied that this Company not only was, but intends to be responsible, and as a result what's important is the principle and not the maximum fine, which surely is imposed where you have got a real "bad cat" who walks away from the mess; and surely that's what the maximum is intended for, and this is definitely not the case here.

THE COURT: I will adjourn for five minutes.

MR.TROY: Sir, just before we adjourn --
The money spent on clean-up, Sir, was a necssary expenditure to be expected. I think what the Crown is interested in is that there be no future occurrences, and if this money and proposed plan of expenditure is going to be made, perhaps the Court should consider that the Court is given some assurance that this plan will be carried through to its fulfilment.

MR. SEARLE: Well, we don't indicate plans without the intention of fulfilling it, and indeed, it will be imposed by the water licence.

THE CLERK: This Court is adjourned for five minutes.

---Adjournment at 4:32 p.m.

---Upon resuming at 5:05 p.m.

THE COURT:

In considering the sentence that ought to be imposed on Giant Yellowknife Mines, the defendant, I only have one of the sentencing principles to consider, and that is the principle of deterrence.

The defendant, in my opinion, is a concerned and responsible corporate citizen. It was aware before the spill that measures to control the mill tailings and effluent was indicated, and was carrying through with a control program, when events caught up and passed them by the serious spillage of deleterious substances into the Yellowknife Bay.

After that event occurred, a more ambitious program involving the expenditure of close to a million dollars was instituted.

At present no spillage is occurring, if I understand the evidence, and will not occur again.

Parliament has indicated its concern with offences of this kind by fixing the maximum penalty of five thousand dollars a day, which is a considerable increase over its previous penalty.

This charge is for one day, and the Crown has asked for the maximum penalty to be imposed as a deterrent.

Comparing the maximum penalty with the cost of the control program now being instituted, I am driven to the conclusion that the defendant is not particularly concerned with the size of the penalty that I am empowered to impose, but much more with its corporate image, which, if it is seriously damaged, renders it difficult to operate in a climate of hostile public opinion.

This is the real deterrent. It knows that it simply cannot carry on by shaving nickels from this aspect of its operations. In this regard the Corporation has in the past demonstrated its concern by spending large sums of money on environmental control, particularly dust control.

I have listened to the Crown cite the various penalties imposed on other corporations for similar offences. These corporations were equally concerned to comply with the environmental control regulations under which they operated.

I can do no better than by imposing a penalty similar in size. I therefore fine Giant Yellowknife Mines the sum of two thousand dollars.

MR. SEARLE: Naturally, Giant doesn't need time to pay, except for it now being after five. It will do so tomorrow, with your leave, Sir.

THE COURT: Yes. Well, that will be all.

THE CLERK: This Court is adjourned.

I hereby certify that the foregoing is a
true and accurate transcript of the
portion of the said proceedings requested.

R. Hobbs, Reporter.

Fisheries and Environment
Canada

Pêches et Environnement
Canada

FISHERIES ACT

R.S.C. 1970, c. F-14

AS AMENDED BY

R.S.C. 1970, c. 17 (1st Supp.)
Statutes of Canada 1974-75 c. 48
Statutes of Canada 1976-77 c. 35
Statutes of Canada 1977-78, c. 41

LOI SUR LES PÊCHERIES

S.R.C. 1970, chap F-14

MODIFIÉE PAR

S.R.C. 1970, chap 17 (1er Supp.)
Statuts du Canada 1974-75 chap 48
Statuts du Canada 1976-77 chap 35
Status du Canada 1977-78, chap. 41

endment List September 19, 1978

Liste de modifications 19 septembre 1978

CHAPTER F-14

An Act respecting fisheries

SHORT TITLE

Short title

1. This Act may be cited as the Fisheries Act. R.S., c. 119, s. 1.

INTERPRETATION

Definitions

2. In this Act

"Canadian fisheries waters" "eaux ..."

"Canadian fisheries waters" means all waters in the fishing zones of Canada, all waters in the territorial sea of Canada and all internal waters of Canada;

"close time" "temps ..."

"close time" means a specified period during which fish to which it applies may not be fished, and "closed time" or "closed season" has a similar meaning;

"fish" "poisson"

"fish" includes shellfish, crustaceans, marine animals and the eggs, spawn, spat and juvenile stages of fish, shellfish, crustaceans and marine animals;

"fishery" "pêcherie"

"fishery" includes the area, locality, place or station in or on which a pound, seine, net, weir or other fishing appliance is used, set, placed or located, and the area, tract or stretch of water in or from which fish may be taken by the said pound, seine, net, weir or other fishing appliance, and also the pound, seine, net, weir, or other fishing appliance used in connection therewith;

"fishing" "pêcher"

"fishing" means fishing for, catching or attempting to catch fish by any method;

"fishing vessel" "bateau ..."

"fishing vessel" means any vessel used, outfitted or designed for the purpose of catching, processing or transporting fish;

"lawful excuse" "excuse ..."

"lawful excuse" means

(a) ability to prove that fish in possession during the close time therefor at the place of possession were legally caught, or

(b) the unintentional or incidental catching of any fish that may not then be taken, when legally fishing for other fish:

"Minister" "Ministre"

"Minister" means the Minister of Fisheries and Forestry. R.S., c. 119, s. 2; 1960-61, c. 23, s. 1; 1964-65, c. 22, s. 12; 1968-69, c. 28, s. 99.

APPLICATION

Provincial rights not affected

3. Nothing in this Act shall be taken to authorize the granting of fishery leases conferring an exclusive right to fish in property belonging not to Canada but to a province. R.S., c. 119, s. 3.

Licences to take spawn

4. Nothing in this Act precludes the granting by the Minister of written permission to obtain fish and spawn for purposes of stocking or artificial breeding or for scientific purposes. R.S., c. 119, s. 4.

R.S.C. 1970, c. 17 (1st. Supp.)
Statutes of Canada 1976-77, c. 35
Amendment List September 22, 1977

CHAPITRE F-14

Loi concernant les pêcheries

TITRE ABRÉGÉ

Titre abrégé

1. La présente loi peut être citée sous le titre: Loi sur les Titre abrégé pêcheries. S.R., c. 119, art. 1.

INTERPRÉTATION

Définitions

2. Dans la présente loi

"bateau de pêche" "fishing vessel"

"bateau de pêche" désigne tout navire utilisé, équipé ou conçu pour la prise, le traitement ou le transport du poisson;

"eaux des pêcheries canadiennes" "Canadian fisheries ..."

"eaux des pêcheries canadiennes" désigne toutes les eaux des zones de pêche du Canada, toutes les eaux de la mer territoriale du Canada et toutes les eaux intérieures du Canada;

"excuse légitime" "lawful ..."

"excuse légitime" signifie

a) l'aptitude à prouver que le poisson possédé en temps prohibé à l'endroit de possession a été légalement capturé ou

b) la capture involontaire ou fortuite de tout poisson qui ne peut être alors capturé, pendant que se fait légalement la pêche d'un autre poisson;

"Ministre" "Minister"

"Ministre" signifie le ministre des Pêches et Forêts;

"pêcher" "fishing"

"pêcher" désigne l'action de prendre ou de chercher à prendre du poisson par quelque mode que ce soit;

"Pêcherie" "fishery"

"pêcherie" comprend l'étendue, la localité, l'endroit ou la station où un parc ou rets à enclos, une seine, un filet, une nasse, ou un autre engin de pêche est employé, tendu, placé ou localisé, et l'étendue ou nappe d'eau dans laquelle le poisson peut être pris au moyen desdits parc ou rets à enclos, seine, filet, nasse ou autre engin de pêche, et aussi le parc ou rets à enclos, la seine, le filet, la nasse ou autre engin employé pour la pêche;

"poisson" "fish"

"poisson" comprend les mollusques, les crustacés et les animaux marins ainsi que leurs oeufs, le frai ou le naissain;

"temps prohibé" "close ..."

"temps prohibé" désigne une période spécifiée pendant laquelle le poisson auquel elle s'applique ne peut pas être pêché et "période de fermeture" ou "saison de fermeture" ont un sens analogue;

APPLICATION

Droits provinciaux sauvegardés

3. Nulle disposition de la présente loi ne doit s'interpréter comme autorisant la concession de baux de pêche qui donnent le droit exclusif de pêcher sur un territoire qui appartient, non au Canada, mais à l'une des provinces du Canada. S.R., c. 119, art. 3.

Permis de prendre du frai

4. Rien dans la présente loi n'empêche le Ministre d'accorder par écrit la permission de se procurer du poisson et du frai pour les fins de repeuplement ou de reproduction artificielle, ou dans un but scientifique. S.R., c. 119, art. 4.

S.R.C. 1970, chap. 17 (1er Supp.)
Statuts du Canada 1976-77, chap. 35
Liste de modifications 22 septembre 1977

Appointment of fishery officers

5. (1) There may be appointed, in the manner authorized by law, fishery officers whose powers and duties are as defined by this Act and any other Act of Parliament.

Authority to administer oaths

(2) The Governor in Council may authorize any fishery officer to administer oaths and take and receive affidavits, declarations and affirmations for any of the purposes of any Act or regulation administered by the Department of Fisheries and Forestry.

Fishery guardians

(3) The Minister may appoint fit and proper persons to act as fishery guardians, who hold office during the pleasure of the Minister, and who have for the purposes of this Act and the regulations the powers of a police constable. R.S., c.119, s. 5; 1960-61, c. 23, s. 2; 1968-69, c. 28, s. 99.

Designation of fishery officers

(4) The Governor in Council may, by order, designate as fishery officers for the purposes of this Act any persons or classes thereof that he deems qualified to act in that capacity.

Oath of office

6. Every fishery officer and fishery guardian shall take and subscribe an oath in the form following, that is to say:

> I, A.B., a fishery officer (or guardian) in and for the District of .... do solemnly swear that to the best of my judgment, I will faithfully, honestly, and impartially fulfil, execute and perform the office and duty of such officer (or guardian) according to the true intent and meaning of the Fisheries Act and regulations and in accordance with my instructions. So help me God. R.S. c. 119, s. 6.

FISHERY LEASES AND LICENCES

Fishery leases and licences

7. The Minister may, in his absolute discretion, wherever the exclusive right of fishing does not already exist by law, issue or authorize to be issued, leases and licences for fisheries or fishing, wherever situated or carried on; but except as hereinafter provided, leases or licences for any term exceeding nine years shall be issued only under authority of the Governor General in Council. R.S., c. 119, s. 7.

Fees

8. Except where licence fees are prescribed in this Act, the Governor in Council may from time to time prescribe the fees that shall be charged for fishery licences. R.S., c. 119, s. 8.

Minister may cancel licence

9. The Minister may cancel any lease or licence issued under the authority of this Act, if he has ascertained that the operations under such licence were not conducted in conformity with its provisions. R.S., c. 119, s. 9.

Nomination des fonctionnaires des pêcheries

5. (1) Peuvent être nommés de la manière autorisée par la loi des fonctionnaires des pêcheries dont les pouvoirs et devoirs sont ceux que définissent les lois du Parlement, notamment la présente.

Pouvoir de faire prêter des serments

(2) Le gouverneur en conseil peut autoriser tout fonctionnaire des pêcheries à faire prêter des serments et à recevoir des affidavits, déclarations et affirmations à l'une quelconque des fins d'une loi ou d'un règlement dont l'application relève du ministère des Pêches et Forêts.

Gardes-pêche

(3) Le Ministre peut nommer des personnes capables et compétentes pour agir à titre de gardes-pêche, qui restent en fonction durant le bon plaisir du Ministre et ont, pour les fins de la présente loi et des règlements, les attributions d'un agent de police. S.R., c. 119, art. 5; 1960-61, c. 23, art. 2; 1968-69, c. 28, art. 99.

Designation des fonctionnaires des pêcheries

(4) Le gouverneur en conseil peut, pour l'application de la présente loi, désigner par décret à titre de fonctionnaires des pêcheries les personnes ou catégories de personnes qu'il juge compétentes.

Serment d'office

6. Tout fonctionnaire des pêcheries et tout garde-pêche doivent prêter et souscrire un serment selon la formule qui suit, savoir:

> Je, A.B., fonctionnaire des pêcheries (ou garde-pêche) dans et pour le district de ...., jure solennellement de remplir et exécuter fidèlement, honnêtement et impartialement et au mieux de mon jugement, la charge et les devoirs de fonctionnaire des pêcheries (ou garde-pêche) selon l'intention et le sens véritables de la Loi sur les pêcheries et des règlements, et conformément à mes instructions. Ainsi Dieu me soit en aide. S.R., c. 119, art. 6.

BAUX ET PERMIS DE PÊCHE

Baux et permis de pêche

7. Le Ministre peut, à sa discrétion absolue, lorsque le droit exclusif de pêche n'existe pas déjà en vertu de la loi, émettre des baux de pêche, des permis pour l'exploitation de pêcheries ou des permis de pêche, ou il peut en autoriser l'émission en quelque endroit que ces pêcheries soient situées ou que la pêche doive se pratiquer; mais, sauf les dispositions qui suivent, les baux ou les permis pour un terme excédant neuf années ne doivent être émis que par autorisation du gouverneur général en conseil. S.R., c. 119, art. 7.

Droits

8. Sauf lorsque des droits de permis sont prevus dans la présente loi, le gouverneur en conseil peut à l'occasion prescrire les droits qui seront exigibles sur les permis de pêche. S.R., c. 119, art. 8.

Le Ministre peut révoquer un permis

9. Le Ministre peut révoquer tout bail ou permis délivré sous l'autorité de la présente loi, s'il a constaté que les opérations visées par ce permis n'ont pas été dirigées conformément à ses dispositions. S.R., c. 119, art. 9.

SEAL FISHING

Seal fisheries

10. No one shall with boat or vessel or in any other way during the time of fishing for seals knowingly or wilfully disturb, impede or interfere with any seal fishery or prevent or impede the shoals of seals from coming into such fishery or knowingly or wilfully frighten such shoals.

Disputes as to seal fisheries

11. Disputes between occupiers of seal fisheries concerning limits and the method of fishing or setting nets shall be decided summarily by any fishery officer or justice of the peace, by whom arbitrators may be appointed to assess damages and any damages so assessed or arising out of a repetition or continuance of the difficulty ordered to be remedied may be levied under the warrant of any justice of the peace.

SALMON FISHING

Fry, parr or smolt

12. Salmonid fry, parr or smolt shall not at any time be fished for, caught or killed.

Use of nets regulated

13. The use of nets, weirs or other apparatus of a like nature for the capture of salmon shall be confined to tidal waters except where otherwise provided by regulation and, where not otherwise specified by law, any fishery officer may determine the length and place of each net or other apparatus used in any Canadian fisheries waters. 1964-65, c. 22, s. 12.

Distance of nets apart

14. All stationary nets, or other stationary appliances for the capture of salmon, shall be placed at distances of not less than two hundred and fifty yards apart, without intermediate fishing nets or appliances of any kind being set or used. R.S., c. 119, art. 13.

(NOTE: This section not applicable in Newfoundland. See SOR/58-189.)

Space between nets and dimensions of nets

15. Any fishery officer may direct, either in writing or orally on sight, that a greater space than two hundred and fifty yards shall be left between stationary salmon nets or other stationary fishing apparatus. R.S., c. 119, s. 14.

As to spawning rivers

16. In the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Quebec no salmon shall be fished for, caught or killed otherwise than by angling with hook and line, within two hundred yards of the mouth of any tributary of any creek or stream which salmon frequent to spawn. R.S., c. 119, s. 15.

PÊCHE AU PHOQUE

Pêcheries de phoques

10. Nul ne doit, au moyen d'un bateau ou navire ou de toute autre manière, durant le temps de la pêche au phoque, troubler, gêner ou déranger une pêcherie de phoque, ni empêcher les troupeaux de phoques d'y entrer, ni les arrêter dans leur marche, ni sciemment ou délibérément les effrayer.

Contestations quant aux pêcheries de phoques

11. Les contestations entre les occupants de pêcheries de phoques, relativement aux limites de pêche et à la manière de faire la pêche ou de tendre leurs rets, sont jugées sommairement par tout fonctionnaire des pêcheries ou juge de paix, qui peut nommer des arbitres pour établir les dommages-intérêts; les dommages-intérêts ainsi fixés ou qui résultent de la répétition ou de la continuation de la difficulté à laquelle il a été ordonné de remédier peuvent être prélevés en vertu d'un mandat de tout juge de paix.

PÊCHE AU SAUMON

Frai, etc.

12. Il est interdit de pêcher ou de tuer du frai ou des alevins de salmonidés et des tacons.

Réglementation de l'usage des rets

13. L'usage de rets, claies ou nasses ou autres engins de même nature pour prendre le saumon est circonscrit aux eaux à marée, sauf dispositions contraires d'un règlement, et, lorsque la loi ne le spécifie pas autrement, tout fonctionnaire des pêcheries peut déterminer la longueur et l'emplacement de chaque rets ou autre engin utilisé dans les eaux des pêcheries canadiennes 1964-65, c. 22, art. 12.

Distance entre les filets

14. Tous les filets ou autres dispositifs stationnaires pour la capture du saumon doivent être placés à une distance d'au moins deux cent cinquante yards les uns des autres; et aucun filet ou engin de pêche intermédiaire ne doit être disposé ou employé. S.R., c. 119, art. 13.

(NOTE: Cet article ne s'applique pas à Terre-Neuve. Voir DORS/58-189.)

Intervalle entre les filets et dimensions des filets

15. Tout fonctionnaire des pêcheries peut ordonner par écrit ou verbalement, sur sa propre constatation, qu'un espace supérieur à deux cent cinquante yards soit ménagé entre les filets stationnaires de pêche au saumon ou autres engins de pêche stationnaires S.R., c. 119, art. 14.

Rivières où le saumon fraie

16. Dans les provinces de la Nouvelle-Écosse, du Nouveau-Brunswick, de l'Île du Prince-Édouard et de Québec, il est défendu de pêcher, prendre ou tuer du saumon autrement qu'à la pêche à la ligne, à moins de deux cents yards de l'embouchure d'un tributaire de cours d'eau ou ruisseau où le saumon va frayer. S.R., c. 119, art. 15.

LOBSTER FISHERIES

Annual returns of lobster factory

17. The owner or manager of every lobster factory or canning establishment shall by the date fixed by the Minister for that purpose deliver to the fishery officer for the district on a form provided by the Minister a statement under oath showing,

(a) the number of fishermen employed, and of the lobster traps used in connection with his factory or canning establishment;

(b) the number of persons employed in such factory or canning establishment, distinguishing the sexes;

(c) the number of cases of lobsters, and the weights thereof, packed during the legal lobster fishing season last concluded and ended; and

(d) such other details and particulars as are required by the Minister. R.S., c. 119, s. 16.

Licences for lobster pounds

18. (1) No one shall maintain a pound or enclosure in which lobsters, legally caught during the open season, shall be retained for sale during the close season at a place where the pound or enclosure is located, or for export therefrom, except under a licence from the Minister, and no lobsters shall be taken from any such pound or enclosure, and disposed of during the close season at the place where it is located, except under a certificate from a fishery officer or fishery guardian, setting forth the pound from which the lobsters were taken and that they had been legally caught during the open season.

Marking of pounds

(2) Each such pound or enclosure shall be marked with the name of the licensee and the number of his licence; such marking shall be in black on a white ground, and the letters and figures shall be at least six inches in height.

Fee

(3) The annual fee for such licence shall be seventy-five dollars. R.S., c. 119, s. 17.

POSSESSION OF FISH

Possession or sale of fish prohibited

19. No one, without lawful excuse, the proof whereof lies on him, shall fish for, buy, sell or have in his possession any fish, or portion of any fish, at a place where at that time fishing for such fish is prohibited by law. R.S., c. 119, s. 18.

PÊCHERIES DE HOMARD

Rapport annuel d'une fabrique de homard

17. Le propriétaire ou gérant d'une usine de salaison ou conserverie de homard doit, à la date fixée par le Ministre à cette fin, remettre au fonctionnaire des pêcheries de son district, sur la formule fournie par le Ministre, une déclaration sous serment indiquant

a) le nombre des pêcheurs employés et des pièges à homard utilisés pour son usine ou conserverie;

b) le nombre de personnes employées dans cette usine ou conserverie, avec mention des sexes;

c) le nombre et le poids des caisses de homard emballées pendant la dernière saison de pêche légale qui a pris fin; et

d) tous autres détails et renseignements que peut exiger le Ministre. R.S., c. 119, art. 16.

Permis d'enclos à homard

18. (1) Sans un permis du Ministre, il est interdit à qui que ce soit de maintenir un parc ou un enclos où les homards, légalement pris pendant la saison de pêche, sont retenus pour la vente en temps prohibé, à l'endroit où est situé le parc ou l'enclos, ou pour en être exportés; et nul ne doit enlever de homard de ce parc ou enclos ni en disposer à cet endroit en temps prohibé, si ce n'est sous l'autorité d'un certificat d'un fonctionnaire des pêcheries ou d'un garde-pêche mentionnant le parc d'où a été enlevé le homard et attestant qu'il a été capturé légalement durant la saison de pêche.

Marques du parc ou enclos

(2) Chaque parc ou enclos doit être marqué du nom du porteur de permis et du numéro de son permis. Ces marques doivent être en noir sur fond blanc, et les lettres et chiffres doivent avoir au moins six pouces de hauteur.

Droit

(3) Le droit annuel à verser pour ce permis est de soixante-quinze dollars. S.R., c. 119, art. 17.

POSSESSION DU POISSON

Possession ou vente de poisson en temps prohibé

19. Il est interdit à qui que ce soit, sans excuse légitime dont la preuve lui incombe, de pêcher, acheter, vendre ou avoir en sa possession aucun poisson ou partie d'un poisson à un endroit où, à cette époque, la pêche de ce poisson est prohibée par la loi. S.R., c. 119, art. 18.

CONSTRUCTION OF FISHWAYS

Fishways to be made as fishery officer directs

20. (1) Every slide, dam or other obstruction across or in any stream where the Minister determines it to be necessary for the public interest that a fish-pass should exist, shall be provided by the owner or occupier with a durable and efficient fishway, or canal around the slide, dam or other obstruction, which shall be maintained in a good and effective condition by the owner or occupier, in such place and of such form and capacity as will in the opinion of the Minister satisfactorily permit the free passage of fish through the same; where it is determined by the Minister in any case that the provision of an efficient fishway or canal around the slide, dam or other obstruction is not feasible, or that the spawning areas above such slide, dam or other obstruction are destroyed, the Minister may require the owner or occupier of such slide, dam or other obstruction to pay to him from time to time such sum or sums of money as he may require to construct, operate and maintain such complete fish hatchery establishment as will in his opinion meet the requirements for maintaining the annual return of migratory fish.

Place, form, etc.

(2) The place, form and capacity of the fishway or canal to be constructed must be approved by the Minister before construction thereof is begun; and immediately after the fishway is completed and in operation the owner or occupier of any dam of obstruction shall make such changes and adjustments at his own cost as will in the opinion of the Minister be necessary for its efficient operation under actual working conditions, if such are found to be needed.

To be kept open

(3) The owner or occupier of every fishway or canal shall keep it open and unobstructed and shall keep it supplied with such sufficient quantity of water as the Minister considers necessary to enable the fish frequenting the waters in which such fishway or canal is placed to pass through the same during such times as are specified by any fishery officer; and, where leaks in a dam cause a fishway therein to be inefficient, the Minister may require the owner or occupier of such dam to prevent such leaks therein.

Minister may pay one-half of cost

(4) The Minister may authorize the payment of one-half of the expense incurred by such owner or occupier in constructing and maintaining any fishway or canal; and after a fishway or canal that has been duly approved by the Minister has been built at the cost of the owner or occupier of any slide, dam or other obstruction, or after such owner or occupier has paid one-half the cost thereof and such fishway or canal thereafter proves to be ineffective, except as provided in subsection (2), the total cost of any change in such fishway or canal or any new fishway or canal required to enable the fish to pass by such slide, dam or other obstruction, shall be paid by Her Majesty.

CONSTRUCTION D'ÉCHELLES À POISSON

Échelles à poisson aux endroits et sur le modèle prescrits par le garde-pêche

20. (1) Tout barrage, glissoire ou autre obstacle en travers d'un cours d'eau ou dans un cours d'eau où le Ministre juge nécessaire dans l'intérêt public qu'il existe une échelle pour le poisson, doit être muni par le propriétaire ou l'occupant d'une échelle à poisson durable et efficace, ou passe migratoire contournant le barrage, la glissoire ou autre obstacle. Le propriétaire ou occupant est tenu de les maintenir en bon état de fonctionnement et de les établir à l'endroit; sur le modèle et suivant les dimensions que le Ministre juge propres à y permettre le libre passage du poisson. Si, à l'occasion, le Ministre juge qu'il est impossible de pourvoir à l'établissement d'une échelle à poisson ou passe migratoire efficace contournant la glissoire, le barrage ou autre obstacle, ou que les frayères en amont de ces glissoire, barrage ou autre obstacle sont détruites, il peut exiger que le propriétaire ou l'occupant de ces glissoire, barrage ou autre obstacle lui verse, de temps à autre, la somme ou les sommes d'argent dont il peut avoir besoin pour construire, mettre en service et entretenir l'établissement complet de pisciculture qui, à son avis, suffira au maintien du retour annuel des poissons migrateurs.

Endroit, modèle, etc.

(2) L'endroit, le modèle et les dimensions de l'échelle à poisson ou passe migratoire à construire doivent être approuvés par le Ministre avant que leur construction soit commencée; et immédiatement après que l'échelle à poisson est terminée et mise en service, le propriétaire ou l'occupant d'un barrage ou obstacle doit faire à ses frais les changements et ajustements qui, de l'avis du Ministre, sont nécessaires à son exploitation efficace dans des conditions réelles de fonctionnement, si ces changements et ajustements sont tenus pour indispensables.

Doivent être libres

(3) Le propriétaire ou l'occupant d'une échelle à poisson ou passe migratoire doit la tenir ouverte et libre de toute obstruction et la pourvoir d'une quantité d'eau suffisante que le Ministre estime nécessaire pour permettre au poisson qui fréquente les eaux où ladite échelle ou passe est placée d'y passer pendant les périodes spécifiées par tout fonctionnaires des pêcheries; et, lorsque des fissures dans un barrage rendent l'échelle à poisson inefficace, le Ministre peut exiger que le propriétaire ou l'occupant de ce barrage remédie à ces fissures.

Le Ministre peut payer la moitié du coût

(4) Le Ministre peut autoriser le paiement de la moitié des frais que la construction et l'entretien d'une échelle ou passe migratoire occasionnent au propriétaire ou à l'occupant; et lorsqu'une échelle ou passe migratoire qui a été dûment approuvée par le Ministre a été construite aux frais du propriétaire ou occupant d'une glissoire, barrage ou autre obstacle, ou lorsque ce propriétaire ou occupant en a payé la moitié du coût et que cette échelle ou passe est dans la suite jugée inefficace, sauf les dispositions du paragraphe (2), le coût total de toute réfection de cette échelle ou passe ou de toute nouvelle échelle ou passe nécessaire pour permettre au poisson de franchir cette glissoire, ce barrage ou autre obstacle, doit être payé par Sa Majesté.

May construct and recover the cost in certain cases

(5) The Minister, in order to procure the construction of any fishway or canal, pending proceedings against any owner or occupier for the penalty imposed by this Act, may make and complete the same forthwith, and may authorize any person to enter upon the premises with the necessary workmen, means and materials for such purpose and may recover from the owner or occupier the whole expense so incurred by action in the name of Her Majesty.

May remove or destroy after notice

(6) Where unused slides, dams, obstructions, or anything detrimental to fish exist, and the owner or occupier thereof does not after notice given by the Minister remove the same, or if the owner is not resident in Canada, or his exact place of residence is unknown to the Minister, the Minister may, without being liable to damages, or in any way to idemnify the said owner or occupier, cause such slide, dam, obstruction, or thing detrimental to fish life to be removed or destroyed and in cases where notice has been given to the owner or occupier, may recover from said owner or occupier the expense of so removing or destroying the same.

Minister may require fish stops or diverters

(7) The Minister may require the owner or occupier of any slide, dam or other obstruction to install and maintain such fish stops or diverters, both above and below any dam or obstruction as will in his opinion be adequate to prevent the destruction of fish or to assist in providing for their ascent.

Water for the descent of fish

(8) At every slide, dam or other obstruction, where the Minister determines it to be necessary the owner or occupier thereof shall, when required by the Minister, provide a sufficient flow of water over the spillway or crest, with connecting sluices into the river below to permit the safe and unimpeded descent of fish.

Protection during construction

(9) The owner or occupier of any slide, dam or other obstruction shall make such provision as the Minister determines to be necessary for the free passage of both ascending and descending migratory fish, during the period of construction thereof.

Sufficient water for river bed below dam

(10) The owner or occupier of any slide, dam or other obstruction shall permit to escape into the river bed below the said slide, dam or other obstruction, such quantity of water, at all times, as will, in the opinion of the Minister, be sufficient for the safety of fish and for the flooding of the spawning grounds to such depth as will, in the opinion of the Minister, be necessary for the safety of the ova deposited thereon. R.S., c. 119, s. 20.

Construction et recouvrement des frais en certains cas

(5) Dans le but d'assurer la construction d'une échelle à poisson ou passe migratoire, lorsque des poursuites sont pendantes contre le propriétaire ou occupant pour le recouvrement de l'amende imposée par la présente loi, le Ministre peut l'établir et terminer sans retard, et il peut autoriser toute personne à se rendre sur les lieux avec les ouvriers, l'outillage et les matériaux nécessaires à cette fin; et, par une action au nom de Sa Majesté, il peut recouvrer du propriétaire ou occupant tous les frais ainsi déboursés.

Enlèvement ou destruction après avis

(6) Lorsque se trouvent inutilisés des barrages, glissoires, obstacles ou toutes choses nuisibles au poisson, et que le propriétaire ou occupant, après avis donné par le Ministre, ne les fait pas disparaître, ou que ce propriétaire ne réside pas au Canada, ou que le lieu exact de sa résidence est inconnu du Ministre, ce dernier peut, sans se rendre passible de dommages-intérêts et sans indemniser en aucune façon ledit propriétaire ou occupant, faire enlever ou détruire lesdits barrages, glissoires, obstacles ou choses nuisibles à la vie du poisson, et si un avis a été donné au propriétaire ou occupant, le Ministre peut recouvrer dudit propriétaire ou occupant les frais de cet enlèvement ou de cette destruction.

Le Ministre peut exiger des appareils pour arrêter ou détourner le poisson

(7) Le Ministre peut obliger le propriétaire ou l'occupant d'une glissoire, d'un barrage ou autre obstacle à installer et entretenir, tant en amont qu'en aval d'un barrage ou obstacle, les appareils pour arrêter ou détourner le poisson qui, de l'avis du Ministre, suffiront à empêcher la destruction du poisson ou aider à assurer sa montée.

Pourvoir de l'eau pour la descente du poisson

(8) A chaque glissoire, barrage ou autre obstacle, où le Ministre le juge nécessaire, le propriétaire ou occupant, lorsqu'il en est requis par le Ministre, doit pourvoir à un débit d'eau suffisant au-dessus de la passe-déversoir ou crête, avec canaux raccordeurs dans la rivière en aval afin de permettre au poisson de descendre sans danger et sans difficulté.

Protection durant la construction

(9) Le propriétaire ou l'occupant d'une glissoire, d'un barrage ou autre obstacle doit prendre les dispositions que le Ministre juge nécessaires pour le libre passage du poisson migrateur, tant à sa montée qu'à sa descente, pendant que sont construits les ouvrages susdits.

Eau nécessaire pour le lit de la rivière en aval du barrage

(10) Le propriétaire ou l'occupant d'une glissoire, d'un barrage ou autre obstacle doit voir à ce qu'il s'échappe en tout temps dans le lit de la rivière en aval de cette glissoire, de ce barrage ou autre obstacle, la quantité d'eau qui, de l'avis du Ministre, suffit à la sécurité du poisson et à l'immersion des frayères à la profondeur nécessaire pour la sécurité des oeufs y déposés, selon que l'estime le Ministre. S.R., c. 119, art. 20.

GENERAL PROHIBITIONS

Fishing in limits leased to another prohibited

21. No one shall fish for, take, catch or kill fish in any water, or along any beach, or within any fishery described in any lease or licence, or place, use, draw or set therein any fishing gear or apparatus, except by permission of the occupant under such lease or licence for the time being, or shall disturb or injure any such fishery. R.S., c. 119, s. 21.

Seines, nets, etc., not to obstruct navigation

22. Seines, nets or other fishing apparatus shall not be set or used in such manner or in such place as to obstruct the navigation of boats and vessels and no boats or vessels shall destroy or wantonly injure in any seines, nets or other fishing apparatus lawfully set. R.S., c. 119, s. 22.

Stakes to be removed

23. Every person using stakes, posts, buoys or other materials placed for fishing purposes in any water shall remove the same within forty-eight hours after ceasing to use them, and in all cases at the expiry of the fishing season. R.S., c. 119, s. 23.

Main channel not to be obstructed

24. (1) One-third of the width of any river or stream, and not less than two-thirds of the width of the main channel at low tide, in every tidal stream shall be always left open, and no kind of net or other fishing apparatus, logs, or any material of any kind shall be used or placed therein.

Use of weirs for eel-catching

(2) The use of weirs for catching eels exclusively, and the use of dams for catching eels, shall be prevented only in cases where, and at times when they injure other fisheries or, by completely barring any passage, they deprive other weirs of a share in the run of eels; and such place, time and circumstances may be determined by any fishery officer.

No net or device to prevent passage of fish

(3) The Minister may authorize the placing and maintaining of barriers, screens, or other obstructions, in streams to prevent the escape of fish held for fish breeding purposes, or any other purpose that he deems in the public interest, and no person shall injure any such barrier, screen or other obstruction. R.S., c. 119, s. 24.

PROHIBITIONS GÉNÉRALES

Défense de pêcher dans les limites louées à d'autres

21. Il est interdit de pêcher, prendre, capturer, tuer du poisson dans une nappe d'eau ou le long d'une grève, ou dans les limites d'une pêcherie décrite dans un bail ou permis, ou d'y placer, employer, tirer ou tendre quelque engin ou appareil de pêche, sans la permission de l'occupant en vertu du bail ou du permis alors en vigueur, et il est également interdit de troubler ou endommager pareille pêcherie. S.R., c. 119, art. 21.

Les rets, etc., ne doivent pas gêner la navigation

22. Les seines, rets et autres engins de pêche ne doivent pas être tendus ni employés de manière à nuire, ni en des endroits où ils pourraient faire obstacle, à la circulation des navires et bateaux; et il est interdit aux navires ou bateaux de détruire ou endommager malicieusement de quelque manière que ce soit les seines, rets ou autres engins de pêche légalement tendus. S.R., c. 119, art. 22.

Enlèvement des piquets

23. Tout individu qui emploie des piquets, pièces de bois, bouées ou autres matériaux placés dans l'eau pour la pêche doit les enlever dans les quarante-huit heures après qu'il a cessé de s'en servir, et dans tous les cas à l'expiration de la saison de pêche. S.R., c. 119, art. 23.

Le chenal principal doit rester ouvert

24. (1) Un tiers de la largeur des rivières ou cours d'eau, et au moins les deux tiers à marée basse de la largeur du chenal principal des cours d'eau où la marée se fait sentir, doivent toujours être laissés libres, et il ne doit pas y être employé ni placé de filet ou autre engin de pêche, de billes ou matériaux de quelque nature que ce soit.

Emploi de nasses à anguille

(2) L'emploi de nasses ou claies uniquement destinées à la pêche à l'anguille, et de barrages pour prendre de l'anguille, n'est défendu que dans les cas et aux époques où cet emploi nuit à d'autres pêcheries, ou lorsqu'en barrant complètement quelque passe, il empêche d'autres nasses ou claies d'avoir leur part lors du passage des anguilles; et le lieu, le temps et les circonstances peuvent être déterminés par tout fonctionnaires des pêcheries.

Nul filet ou engin de pêche ne doit empêcher le passage du poisson

(3) Le Ministre peut autoriser le placement et l'entretien des barrières, claies ou autres obstacles dans les ruisseaux pour empêcher le poisson destiné à la reproduction de s'échapper, ou pour toute autre fin qu'il juge d'intérêt public, et nul ne doit détériorer ces barrières, claies ou autres obstacles. S.R., c. 119, art. 24.

Killing fish when passing through fishways, etc., prohibited

25. No one shall injure or obstruct any fishway or canal built, constructed or used to enable fish to pass over or around any slide, dam or other obstruction or do anything to stop, impede or hinder fish from entering or passing the same or to stop, impede or hinder fish from surmounting any obstacle or leap, nor shall any one fish in any manner within twenty-five yards downstream from the lower entrance to any fishway or canal, obstacle or leap. R.S., c. 119, s. 25.

Use of explosives prohibited

26. No one shall hunt or kill fish or marine animals of any kind, other than porpoises, whales, walruses, sea lions and hair seals, by means of rockets, explosive materials, or explosive projectiles or shells R.S., c. 119, s. 26.

Nets, weirs, etc., not to obstruct passage of fish

27. No one shall erect, use or maintain in any of the waters of Canada whether subject to any exclusive right of fishery or not, any net, weir, or other device that unduly obstructs the passage of fish; and the Minister or any fishery officer may order the removal of or remove any net, weir, or other device that, in the opinion of the Minister or any fishery officer, unduly obstructs the passage of fish. R.S., c. 119, s. 27.

Fish guards only where Minister deems necessary

28. (1) Every water intake, ditch, channel or canal in Canada constructed or adapted for conducting water from any Canadian fisheries waters for irrigating, manufacturing, power generation, domestic or other purposes, shall, if the Minister deems it necessary in the public interest, be provided at its entrance or intake with a fish guard or a screen, covering or netting, so fixed as to prevent the passage of fish from any Canadian fisheries waters into such water intake, ditch, channel or canal.

Structure of fish guards

(2) The fish guard, screen, covering or netting referred to in subsection (1) shall have meshes or holes of such dimensions as the Minister may prescribe, and shall be built and maintained by the owner or occupier of the water intake, ditch, channel or canal referred to in subsection (1), subject to the approval of the Minister or of such officer as the Minister may appoint to examine it.

Duty of owner to keep in repair

(3) The owner or occupier of the water intake, ditch, channel or canal referred to in subsection (1) shall maintain the fish guard, screen, covering or netting referred to in that subsection in a good and efficient state of repair and shall not permit its removal except for renewal or repair, and during the time such renewal or repair is being effected the sluice or gate at the intake or entrance of the water intake, ditch, channel or canal shall be closed in order to prevent the passage of fish into the water intake, ditch, channel or canal.

Défense de tuer le poisson à son passage dans les échelles

25. Il est interdit à qui que ce soit de détériorer ou obstruer une échelle à poisson ou passe migratoire construite ou employée pour permettre au poisson de franchir ou contourner une glissoire, un barrage ou autre obstacle, ou de faire quoi que ce soit pour y arrêter, gêner ou empêcher l'entrée ou le passage du poisson ou pour arrêter, gêner ou empêcher le poisson de surmonter un obstacle ou de sauter; et il est également défendu de pêcher de quelque manière que ce soit à moins de ving-cinq yards en aval de l'entrée inférieure de toute passe ou échelle à poisson, de tout obstacle ou espace à sauter. S.R., c. 119, art. 25.

Prohibition des matières explosives

26. Il est interdit de tuer du poisson, ou de chasser des animaux marins d'une espèce qui n'est pas le marsouin, la baleine, le morse, le lion marin et le phoque à poil, au moyen de fusées, de matières explosives ou de bombes ou projectiles explosifs. S.R., c. 119, art. 26.

Filets, etc., obstruant le passage du poisson

27. Il est interdit à qui que ce soit de tendre, employer, ou maintenir dans une nappe d'eau du Canada, qu'elle soit ou non assujettie à un droit de pêche exclusif, un filet, claie ou autre engin de pêche qui obstrue indûment le passage du poisson; et le Ministre ou tout fonctionnaire des pêcheries peut ordonner ou opérer l'enlèvement de tout filet, claie, ou autre engin de pêche qui, de l'avis du Ministre ou de ce fonctionnaire des pêcheries, obstrue indûment le passage du poisson. S.R., c. 119, art. 27.

Garde-poisson seulement aux endroits que le Ministre juge nécessaires

28. (1) Tout fossé, chenal, canal ou prise d'eau construit ou disposé, au Canada, pour conduire l'eau de quelque eau des pêcheries canadiennes pour fins d'irrigation, de production d'énergie ou pour fins industrielles ou domestiques, ou autres fins, doit si le Ministre le juge nécessaire dans l'intérêt public, être muni à son entrée ou point de dérivation d'un garde-poissons, grillage, treillis ou filet, placé de manière à empêcher le passage du poisson de toute eau des pêcheries canadiennes dans ces prises d'eau, fossé, chenal ou canal.

Structure des garde-poissons

(2) Les garde-poissons, grillages, treillis ou filets prévus au paragraphe (1) doivent avoir des mailles ou trous ayant les dimensions que le Ministre peut prescrire et être posés et entretenus par le propriétaire ou l'occupant des fossés, chenaux, canaux ou prises d'eau mentionnés au paragraphe (1), sous réserve de l'approbation du Ministre ou du fonctionnaire que celui-ci peut charger de leur examen.

Devoir du propriétaire de tenir le garde-poissons en bon état

(3) Le propriétaire ou l'occupant des prises d'eau, fossés, chenaux ou canaux prévus au paragraphe (1) doivent maintenir le garde-poissons, le grillage, le treillis ou le filet prévu au paragraphe (1) en bon état et ne doivent permettre qu'il soit enlevé que pour être remplacé ou réparé; et pendant le temps que se fait cette réfection ou réparation, la vanne, la porte ou l'entrée du point de dérivation de la prise d'eau, du fossé, du chenal ou du canal doit être fermée de façon à empêcher le passage du poisson dans la prise d'eau, le fossé, le chenal ou le canal.

Permit required

29. No one shall catch, fish for, take, buy, sell, possess or export any fish for the purposes of converting it into fish meal, manure, guano, or fertilizer, or for the manufacture or conversion of such fish into oil, fish meal or manure or other fertilizing product, except under authority of the Minister; but the Minister may, by notice published in the Canada Gazette, except any kind or kinds of fish from the operation of this section or any part of this section, and may at any time by a notice similarly published, withdraw such exception. R.S., c. 119, s. 29.

Destruction of fish

30. No person shall destroy fish by any means other than fishing except as authorized by the Minister or under regulations made by the Governor in Council under this Act.

Harmful alteration, etc., of fish habitat

31. (1) No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.

Alteration, etc., authorized

(2) No person contravenes subsection (1) by causing the alteration, disruption or destruction of fish habitat by any means or under any conditions authorized by the Minister or under regulations made by the Governor in Council under this Act.

Punishment

(3) Every person who contravenes subsection (1) is guilty of an offence and liable

(a) on summary conviction, to a fine not exceeding five thousand dollars for a first offence, and not exceeding ten thousand dollars for each subsequent offence; or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Application of section 33

(4) Subsections 33(6) to (9) apply in respect of an offence under this section as if it were an offence under section 33.

“Fish habitat” defined

(5) For the purposes of this section and sections 33, 33.1 and 33.2, “fish habitat” means spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes.

Purse seine

32. No person shall use a purse seine in any Canadian fisheries waters for the taking of salmon, pilchard, herring, smelts, mackerel or pollock except under licence from the Minister issued under this Act or any other Act of Parliament or regulations made pursuant thereto.

Permis nécessaire

29. Il est défendu de prendre, pêcher, capturer, acheter, vendre, posséder ou exporter du poisson de quelque espèce que ce soit dans le but de le convertir en nourriture de poisson, fumier, guano ou engrais, ou pour le fabriquer ou le convertir en huile, farine de poisson, fumier ou autre produit fertilisant, sauf avec l'autorisation du Ministre; mais le Ministre peut, par avis publié dans la Gazette du Canada, soustraire toute espèce ou toutes espèces de poissons à l'application du présent article ou de l'une de ses parties, et peut, en tout temps, au moyen d'un avis publié de la même manière, retirer cette exception. S.R., c. 119, art. 29.

Destruction des poissons

30. Il est interdit de causer la mort des poissons autrement que par la pêche sauf sur autorisation du Ministre ou en vertu des règlements que le gouverneur en conseil établit en vertu de la présente loi.

Détérioration de l'habitat des poissons, etc.

31. (1) Il est interdit d'exploiter des ouvrages ou entreprises diminuant ou faisant disparaître les qualités biologiques de l'habitat des poissons ou rompant son équilibre d'une manière préjudiciable.

Exception

(2) Le paragraphe (1) ne s'applique pas aux personnes qui diminuent, font disparaître ou rompent l'équilibre de l'habitat des poissons en utilisant des moyens ou en agissant dans des circonstances autorisés par le Ministre ou conformes aux règlements établis par le gouverneur en conseil en vertu de la présente loi.

Peine

(3) Toute personne qui contrevient au paragraphe (1) est coupable d'une infraction et passible

a) sur déclaration sommaire de culpabilité, d'une amende maximale de cinq mille dollars pour une première infraction et de dix mille dollars pour chaque infraction subséquente; ou

b) sur déclaration de culpabilité par voie de mise en accusation, d'un emprisonnement maximal de deux ans.

Application de l'article 33

(4) Les paragraphes 33(6) à (9) s'appliquent à l'infraction créée par le présent article comme si elle constituait une infraction à l'article 33.

Définition “d'habitat des poissons”

(5) Aux fins du présent article et des articles 33, 33.1 et 33.2, “habitat des poissons” désigne les frayères, les réserves de nourriture et les aires d'alevinage, d'élevage et de migration dont dépend directement ou indirectement la survie des poissons.

Usage de l'essaugue

32. Il est interdit d'utiliser une essaugue dans quelqu'une des eaux des pêcheries canadiennes pour capturer du saumon, du pilchard, du hareng, de l'éperlan, du maquereau et du merlan, sauf en vertu d'un permis du Ministre, délivré en vertu de la présente ou de toute autre loi du Parlement ou de ses règlements d'application.

INJURY TO FISHING GROUNDS AND POLLUTION OF WATERS

Throwing overboard of certain substances prohibited

33. (1) No one shall throw overboard ballast, coal ashes, stones, or other prejudicial or deleterious substances in any river, harbour or roadstead, or in any water where fishing is carried on, or leave or deposit or cause to be thrown, left or deposited, upon the shore, beach or bank of any water or upon the beach between high and low water mark, remains or offal of fish, or of marine animals, or leave decayed or decaying fish in any net or other fishing apparatus; such remains or offal may be buried ashore, above high water mark.

Deposit of deleterious substance prohibited

(2) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of such deleterious substance may enter any such water.

Slash, stumps, etc., prohibited

(3) No person engaging in logging, lumbering, land clearing or other operations, shall put or knowingly permit to be put, any slash, stumps or other debris into any water frequented by fish or that flows into such water, or on the ice over either such water, or at a place from which it is likely to be carried into either such water.

Deposits authorized by regulation

(4) No person contravenes subsection (2) by depositing or permitting the deposit in any water or place

(a) of waste or pollutant of a type, in a quantity and under conditions authorized by regulations applicable to that water or place made by the Governor in Council under any Act other than this Act; or

(b) of a deleterious substance of a class, in a quantity or concentration and under conditions authorized by or pursuant to regulations applicable to that water or place or to any work or undertaking or class thereof, made by the Governor in Council under subsection (13).

Offence and punishment

(5) Any person who contravenes any provision of

(a) subsection (1) or (3) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars for a first offence, and not exceeding ten thousand dollars for each subsequent offence; or

DÉTÉRIORATION DES PÊCHERIES ET POLLUTION DES EAUX

Le jet par-dessus bord de certaines substances est prohibé

33. (1) Il est interdit de jeter par-dessus bord du lest, des cendres de charbon, des pierres ou d'autres substances nuisibles ou délétères dans une rivière, un port, une rade, ou dans des eaux où se fait la pêche, ou de laisser ou déposer ou faire jeter, laisser ou déposer sur la rive, la grève ou le bord de quelque cours ou nappe d'eau, ou sur la grève entre les marques des hautes et des basses eaux, des restes ou issues de poissons ou d'animaux marins, ou de laisser du poisson gâté ou en putréfaction dans un filet ou autre engin de pêche. Ces restes ou issues de poissons peuvent être enterrés sur la grève, au-delà de la marque des eaux à marée haute.

Dépôt de substances nocives prohibé

(2) Sous réserve du paragraphe (4), il est interdit à qui que ce soit de déposer ou de permettre que l'on dépose une substance nocive dans des eaux poissonneuses ou en quelque lieu dans des conditions où cette substance nocive ou une autre substance nocive résultant du dépôt de cette substance pourrait pénétrer dans de telles eaux.

Déchets, souches, etc., prohibés

(3) Il est interdit à quiconque fait l'abattage ou la coupe de bois, le défrichement ou autres opérations de déposer ou de permettre sciemment de déposer des déchets de bois, souches ou autres débris dans une eau fréquentée par le poisson ou qui se déverse dans cette eau, ou sur la glace qui recouvre l'une ou l'autre de ces eaux, ou de les déposer dans un endroit d'où il est probable qu'ils soient entraînés dans l'une ou l'autre de ces eaux.

Immersion permise par règlement

(4) Par dérogation au paragraphe (2), il est permis d'immerger ou de rejeter en un lieu

a) les déchets ou les substances polluantes désignés par les règlements applicables au lieu et établis par le gouverneur en conseil en vertu d'une autre loi, pourvu que les conditions, notamment les quantités maximales, y fixées soient respectées;

b) les substances nocives des catégories désignées ou prévues par les règlements applicables au lieu, aux ouvrages ou entreprises ou à leurs catégories et établis par le gouverneur en conseil en vertu du paragraphe (13), pourvu que les quantités maximales et les degrés de concentration, y désignées ou prévues soient respectées.

Infraction et peine

(5) Toute personne qui contrevient aux dispositions

a) des paragraphes (1) ou (3) est coupable d'une infraction et passible sur déclaration sommaire de culpabilité d'une amende maximale de cinq mille dollars pour une première infraction et de dix mille dollars pour chaque infraction subséquente; ou

R.S.C. 1970, c. 17 (1st Supp.)
Statutes of Canada 1976-77, c. 35

S.R.C. 1970, chap. 17 (1er Supp.)
Statuts du Canada 1976-77, chap. 35

(b) subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding fifty thousand dollars for a first offence, and not exceeding one hundred thousand dollars for each subsequent offence.

(6) Where an offence under subsection (5) is committed on more than one day or is continued for more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.

Order to refrain or take action

(7) Where a person is convicted of an offence under this section, the court may, in addition to any punishment it may impose, order that person to refrain from committing any further such offence or to cease to carry on any activity specified in the order the carrying on of which, in the opinion of the court, will or is likely to result in the committing of any further such offence or to take such action specified in the order as, in the opinion of the court, will or is likely to prevent the commission of any further such offence.

Proof of offence

(8) In a prosecution for an offence under this section or section 33.4, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

Action to enjoin not prejediced by prosecution

(9) Notwithstanding that a prosecution has been instituted in respect of an offence under this section, the Attorney General of Canada may commence and maintain proceedings to enjoin any violation of any provision of this section.

Civil liability

(10) Where there occurs a deposit of a deleterious substance in water frequented by fish that is not authorized under this section or a serious and imminent danger thereof by reason of any condition, the persons who at any material time

(a) own the deleterious substance or have the charge, management or control thereof, or

(b) are persons other than those described in paragraph (a) who cause or contribute to the causation of the deposit or danger thereof,

are, subject to subsection (10.2) in the case of the persons referred to in paragraph (a) and to the extent determined according to their respective degrees of fault or negligence in the case of the persons referred to in paragraph (b), jointly and

b) du paragraphe (2) est coupable d'une infraction et passible sur déclaration sommaire de culpabilité d'une amende maximale de cinquante mille dollars pour une première infraction de cent mille dollars pour chaque infraction subséquente.

(6) Lorsqu'une infraction prévue au paragraphe (5) se répète à des jours différents ou se continue pendant plus d'une journée, elle est censée constituer une infraction distincte pour chaque jour pendant lequel l'infraction est commise ou se continue.

Ordonnance du tribunal

(7) Lorsqu'une personne est déclarée coupable d'une infraction prévue au présent article, le tribunal peut, en sus de toute autre peine qu'il peut imposer, ordonner à cette personne de s'abstenir de commettre de nouveau une telle infraction, de cesser d'exercer toute activité spécifiée dans l'ordonnance dont l'exercice entraînera ou risque d'entraîner, de l'avis du tribunal, la commission d'une telle infraction ou de prendre les mesures spécifiées dans l'ordonnance qui, de l'avis du tribunal, sont susceptibles d'empêcher toute récidive.

Preuve de l'infraction

(8) Dans la poursuite d'une infraction prévue au présent article ou à l'article 33.4, il suffit, pour établir l'infraction, de démontrer qu'elle a été commise par un employé ou un mandataire de l'accusé, que cet employé ou mandataire soit ou non identifié ou qu'il ait été poursuivi ou non pour cette infraction, à moins que cet accusé n'établisse d'une part que la contravention a été commise sans qu'il le sache ou y consente et d'autre part qu'il s'est dûment appliqué à prévenir sa commission.

Les poursuites n'empêchent pas une injonction

(9) Nonobstant le fait qu'une poursuite a été intentée relativement à une infraction en vertu du présent article, le procureur général du Canada peut engager et continuer des procédures en vue de faire interdire par injonction toute violation d'une disposition du présent article.

Recours civils

(10) Lorsque se produisent le rejet ou l'immersion non autorisé en vertu du présent article d'une substance nocive dans des eaux où vivent des poissons ou un risque sérieux et imminent de rejet ou d'immersion, les personnes qui, aux époques pertinentes

a) étaient propriétaires de la substance nocive ou en avaient la charge, l'administration ou le contrôle, ou

b) sans être les personnes visées à l'alinéa a), ont causé le rejet ou l'immersion ou le danger de rejet ou d'immersion ou y ont contribué

sont sous réserve du paragraphe (10.2) dans le cas des personnes mentionnées à l'alinéa a) et dans la mesure de leur faute ou négligence respective dans

severally liable for all costs and expenses incurred by Her Majesty in right of Canada or a province, to the extent that such costs and expenses can be established to have been reasonably incurred in the circumstances, of and incidental to the taking of any measures to prevent any such deposit or condition or to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result therefrom, and all such costs and expenses are recoverable by Her Majesty in right of Canada or a province with costs in proceedings brought or taken therefor in the name of Her Majesty in any such right in any court of competent jurisdiction.

Idem

(10.1) Where, as a result of a deposit that is not authorized under this section, a deleterious substance enters water frequented by fish, the persons who at any material time

(a) own the deleterious substance or have the charge, management or control thereof, or

(b) are persons other than those described in paragraph (a) who cause or contribute to the causation of the deposit,

are, subject to subsection (10.2) in the case of the persons referred to in paragraph (a) and to the extent determined according to their respective degrees of fault or negligence in the case of the persons referred to in paragraph (b), jointly and severally liable for all loss of income incurred by any licensed commercial fisherman, to the extent that such loss can be established to have been incurred as a result of the deposit or of a prohibition to fish resulting therefrom, and all such loss is recoverable with costs in proceedings brought or taken therefor in any court of competent jurisdiction.

Defences to liability

(10.2) The liability of any person referred to in paragraph (10) (a) or (10.1) (a) is absolute and does not depend on proof of fault or negligence but no such person is liable for any costs and expenses pursuant to subsection (10) or loss of income pursuant to subsection (10.1) if he establishes that the occurrence giving rise to the liability was wholly caused by

(a) an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or

(b) an act or omission with intent to cause damage by a person other than a person for whose wrongful act or omission he is by law responsible,

and nothing in this subsection, subsection (10) or subsection (10.1) limits or restricts any right of recourse that any person who is liable pursuant to subsection (10) or (10.1) may have against any other person.

le cas des personnes mentionnées à l'alinéa b), solidairement responsables des frais directs et indirects que subit sa Majesté du chef du Canada ou d'une province pour autant que l'on puisse établir qu'ils ont été normalement encourus dans les circonstances, relativement aux mesures prises en vue de prévenir le rejet ou l'immersion ou le risque de rejet ou d'immersion ou d'y remédier ou de réduire ou d'atténuer tout dommage causé ou qui risque normalement d'en devenir la conséquence; ces frais sont recouvrables par Sa Majesté du chef du Canada ou d'une province lors de procédures intentées en Son Nom devant tout tribunal compétent.

Idem

(10.1) Lorsque, par suite du rejet ou de l'immersion non autorisé en vertu du présent article, une substance nocive pénètre dans des eaux où vivent des poissons, les personnes qui, aux époques pertinentes

a) étaient propriétaires de la substance nocive ou en avaient la charge, l'administration ou le contrôle ou

b) sans être les personnes visées à l'alinéa a), ont causé le rejet ou l'immersion ou y ont contribué,

sont, sous réserve du paragraphe (10.2) dans le cas des personnes mentionnées à l'alinéa a) et dans la mesure de leur faute ou négligence respective dans le cas des personnes mentionnées à l'alinéa b), solidairement responsables de toutes les pertes de revenu subies par les détenteurs d'un permis de pêche commerciale dans la mesure où il peut être établi que ces pertes résultent du rejet ou de l'immersion ou de la fermeture des eaux à la pêche qu'ils ont entraînée; ces pertes sont recouvrables avec dépens lors de procédures intentées devant tout tribunal compétent.

Exonération de responsabilité

(10.2) La responsabilité des personnes mentionnées à l'alinéa (10) a) ou (10.1) a) est absolue et ces personnes sont toujours responsables des frais prévus au paragraphe (10) et des pertes de revenu visées au paragraphe (10.1), même en l'absence de faute ou de négligence, à moins qu'elles n'établissent que l'événement est entièrement attribuable

a) à des faits de guerre, des hostilités, une guerre civile, une insurrection ou des phénomènes naturels exceptionnels et irrésistibles; ou

b) l'action ou abstention consciente et dommageable d'une personne dont elles ne sont pas légalement responsables.

Le présent paragraphe et le paragraphe (10) et (10.1) ne limitent pas les recours éventuels des personnes visées au paragraphe (10 et (10.1) contre les tiers.

Other civil remedies not affected

(10.3) No civil remedy for any act or omission is suspended or affected by reason only that the act or omission is authorized under this Act, is an offence under this Act or gives rise to civil liability under this section.

Limitation

(10.4) No proceedings may be commenced under subsection (10) or (10.1) at any time later than two years after the occurrence to which the proceedings relate could reasonably be expected to have become known to Her Majesty in right of Canada or a province or to any licensed commercial fisherman, as the case may be.

Exception

(10.5) Notwithstanding anything in this section, subsections (10) and (10.1) do not apply in respect of any deposit of a deleterious substance that, within the meaning of Part XX of the Canada Shipping Act, constitutes a discharge of a pollutant caused by or otherwise attributable to a ship.

Definitions

(11) For the purposes of this section and sections 33.1 and 33.2,

"deleterious substance"

"deleterious substance" means

a) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, or

(b) any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water,

and without limiting the generality of the foregoing includes

(c) any substance or class of substances prescribed pursuant to paragraph (12) (a),

(d) any water that contains any substance or class of substances in a quantity or concentration that is equal to or in excess of a quantity or concentration prescribed in respect of that substance or class of substances pursuant to paragraph (12) (b), and

(e) any water that has been subjected to a treatment, process or change prescribed pursuant to paragraph (12) (c);

"deposit"

"deposit" means any discharging, spraying, releasing, spilling, leaking, seeping, pouring, emitting, emptying, throwing, dumping or placing;

Autres recours

(10.3) Aucun autre recours civil pour un acte ou une omission n'est suspendu ou affecté du simple fait que l'acte ou l'omission est autorisé en vertu de la présente loi, constitue une infraction à la présente loi ou entraîne une responsabilité civile sous le régime du présent article.

Prescription

(10.4) Les procédures intentées en vertu du paragraphe (10) ou (10.1) ne peuvent l'être plus de deux ans après la connaissance réelle ou raisonnablement présumée de l'événement auquel elles se rattachent par Sa Majesté du chef du Canada ou d'une province ou du détenteur d'un permis de pêche commerciale, selon le cas.

Exception

(10.5) Nonobstant le présent article, les paragraphes (10 et (10.1) ne s'appliquent pas à l'immersion ou au rejet d'une substance nocive qui constitue, au sens de la Partie XX de la Loi sur la marine marchande du Canada, un déversement de polluant qui est causé par un navire ou lui est autrement attribuable.

Définitions

(11) Pour l'application du présent article et des articles 33.1 et 33.2,

"substance nocive"

"substance nocive" désigne

a) toute substance qui, si elle était ajoutée à une eau, dégraderait ou modifierait ou contribuerait à dégrader ou à modifier la qualité de cette eau de façon à la rendre nocive, ou susceptible de le devenir, pour le poisson ou son habitat ou encore à rendre nocive l'utilisation par l'homme du poisson qui vit dans cette eau, ou

b) toute eau qui contient une substance en une quantité ou concentration telle, ou qui, à partir de son état naturel, a été traitée, transformée ou modifiée par la chaleur ou d'autres moyens d'une façon telle que si elle était ajoutée à une autre eau, elle dégraderait ou modifierait ou contribuerait à dégrader ou à modifier la qualité de cette eau de façon à la rendre nocive, ou susceptible de le devenir, pour le poisson ou son habitat encore à rendre nocive l'utilisation par l'homme du poisson qui vit dans cette eau,

et comprend notamment,

c) toute substance ou catégorie de substances prescrites en vertu de l'alinéa (12) a),

d) de l'eau qui contient une substance ou une substance d'une catégorie en quantités ou en concentrations égales ou supérieures aux normes prescrites en vertu de l'alinéa (12) b), et

e) de l'eau traitée, transformée ou modifiée dans les circonstances prévues à l'alinéa (12) c);

"immersion" ou "rejet"

"immersion" ou "rejet" désigne le versement, le déversement, l'écoulement, le suintement, l'arrosage, l'épandage, la vaporisation, l'évacuation, l'émission, le vidage, le jet, le basculage ou le dépot;

"water frequented by fish" "water frequented by fish" means Canadian fisheries waters.

Regulations (12) The Governor in Council may make regulations prescribing

(a) substances and classes of substances,

(b) quantities or concentrations of substances and classes of substances in water, and

(c) treatments, processes and changes of water

for the purpose of paragraphs (c) to (e) of the definition "deleterious substance" in subsection (11).

Regulations (13) The Governor in Council may make regulations for the purpose of paragraph (4) (b) prescribing

(a) the deleterious substances or classes thereof authorized to be deposited notwithstanding subsection (2);

(b) the waters or places or classes thereof where any deleterious substances or classes thereof referred to in paragraph (a) are authorized to be deposited;

(c) the works or undertakings or classes thereof in the course or conduct of which any deleterious substances or classes thereof referred to in paragraph (a) are authorized to be deposited;

(d) the quantities or concentrations of any deleterious substances or classes thereof referred to in paragraph (a) that are authorized to be deposited;

(e) the conditions or circumstances under which and the requirements subject to which any deleterious substances or classes thereof referred to in paragraph (a) or any quantities or concentrations of such deleterious substances or classes thereof are authorized to be deposited in any waters or places or classes thereof referred to in paragraph (b) or in the course or conduct of any works or undertakings or classes thereof referred to in paragraph (c); and

(f) the persons who may authorize the deposit of any deleterious substances or classes thereof in the absence of any other authority, and the conditions or circumstances under which and requirements subject to which such persons may grant such authorization.

Directions by the Minister (14) A person authorized to deposit a deleterious substance by or under regulations made pursuant to subsection (13) shall, when directed in writing by the Minister, notwithstanding any regulations made pursuant to paragraph (13) (e) or any conditions set out in an authorization made pursuant to paragraph (13) (f),

(a) conduct such sampling, analyses, tests, measurements or monitoring,

R.S.C. 1970, c. 17 (1st Supp.)
Statutes of Canada 1976-77, c. 35

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"eaux où vivent des poissons" "eaux où vivent des poissons" désigne les eaux des pêcheries canadiennes.

Réglements (12) Le gouverneur en conseil peut établir des réglements prescrivant

a) les substances et catégories de substances,

b) les quantités ou concentrations de substances et catégories de substances dans l'eau, et

c) les traitements, transformations et modifications de l'eau

aux fins des alinéas c) à e) de la définition de "substance nocive" au paragraphe (11).

Réglement (13) Pour l'application de l'alinéa (4) b), le gouverneur en conseil peut, par règlement, désigner

a) les substances ou catégories de substances nocives dont l'immersion ou le rejet sont autorisés par dérogation au paragraphe (2);

b) les eaux et les lieux ou leurs catégories où l'immersion ou le rejet des substances ou catégories de substances visées à l'alinéa a) sont autorisés;

c) les ouvrages, entreprises ou catégories d'ouvrages ou d'entreprises pour lesquels l'immersion ou le rejet des substances ou des catégories de substances visées à l'alinéa a) sont autorisés;

d) les quantités ou les degrés de concentration des substances ou des catégories de substances visées à l'alinéa a) dont l'immersion ou le rejet sont autorisés;

e) les conditions, les quantités, les exigences préalables et les degrés de concentration autorisés pour l'immersion ou le rejet des substances ou catégories de substances visées à l'alinéa a) dans les eaux et les lieux visés à l'alinéa b) ou dans le cadre des ouvrages ou entreprises visées à l'alinéa c); et

f) les personnes habilitées à autoriser l'immersion ou le rejet de substances ou de catégories de substances nocives en l'absence de toute autre autorité et les conditions et exigences préalables à l'exercice de ce pouvoir par ces personnes.

Directives ministérielle (14) Les personnes autorisées à immerger ou à rejeter des substances nocives en vertu des règlements d'application du paragraphe (13) doivent, sur l'ordre écrit du Ministre, nonobstant les règlements d'application des alinéas (13) e) ou les conditions énoncées dans les autorisations prévues à l'alinéa (13) f),

a) prélever les échantillons, faire les analyses, les tests et contrôles ou recueillir les données.

S.R.C. 1970, chap. 17 (1er Supp.)
Statuts du Canada 1976-77, chap. 35

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(b) install or operate such equipment or comply with such procedures, and

(c) report such information

as may be required by the Minister in order to determine whether the person is depositing the deleterious substance in the manner authorized.

Minister may require plans and specifications

33.1 (1) Every person who carries on or proposes to carry on any work or undertaking that results or is likely to result in

(a) the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other deleterious substance that results from the deposit of that deleterious substance may enter any such water, or

(b) the alteration, disruption or destruction of fish habitat,

shall, on the request of the Minister or without request in the manner and circumstances prescribed by regulations made under paragraph (3) (a), provide the Minister with such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine

(c) whether there is or is likely to be a deposit of a deleterious substance by reason of such work or undertaking that constitutes or would constitute an offence under section 33 and what measures, if any, would prevent such a deposit or mitigate the effects thereof; or

(d) whether the work or undertaking results or is likely to result in any alteration, disruption or destruction of fish habitat that constitutes or would constitute an offence under section 31 and what measures, if any, would prevent such a result or mitigate the effects thereof.

Powers of Minister

(2) If, after reviewing any material or information provided under subsection (1) and affording the persons who provided it a reasonable opportunity to make representations, the Minister or a person designated by the Minister is of the opinion that an offence under section 31 or 33 is being or is likely to be committed, the Minister or a person designated by the Minister may, by order, subject to regulations made pursuant to paragraph (3) (b), or, if there are no such regulations in force, with the approval of the Governor in Council,

(a) require such modifications or additions to the work or undertaking or such modifications to any plans, specifications, procedures or schedules relating thereto as the Minister or a person designated by the Minister considers necessary in the circumstances, or

b) installer ou utiliser les appareils ou prendre les mesures, et

c) fournir les renseignements

jugés nécessaires par lui pour déterminer si les conditions de l'autorisation ont été respectées.

Plans et devis peuvent être requis par le Ministre

33.1 (1) Les personnes qui exploitent ou se proposent d'exploiter des ouvrages ou entreprises de nature à entraîner,

a) l'immersion de substances nocives dans des eaux où vivent des poissons ou leur rejet en un lieu dans des conditions susceptibles de permettre l'écoulement de cette substance ou d'une autre substance nocive résultant du rejet dans ces eaux,

b) la diminution ou la disparition des qualités biologiques de l'habitat des poissons ou la rupture de son équilibre,

doivent, à la demande du Ministre ou sans qu'il en fasse la demande dans les cas et de la manière prévus par les règlements d'application de l'alinéa (3) a), lui fournir les plans, devis, études, pièces, annexes, programmes, analyses, échantillons et autres renseignements concernant l'ouvrage ou l'entreprise ainsi que les analyses, échantillons, évaluations, études et autres renseignements concernant les eaux, lieux ou habitats des poissons menacés, qui lui permettront de déterminer

c) si l'ouvrage ou l'entreprise est ou non susceptible d'entraîner l'immersion ou le rejet d'une substance en contravention de l'article 33 et les mesures éventuelles à prendre pour prévenir ou limiter les dommages; ou

d) si l'ouvrage ou l'entreprise est de nature à faire diminuer ou disparaître les qualités biologiques de l'habitat des poissons ou de rompre son équilibre en contravention à l'article 31 et les mesures éventuelles à prendre pour prévenir ou limiter les dommages.

Pouvoirs du Ministre

(2) Si, après examen des documents et des renseignements qui lui sont fournis en vertu du paragraphe (1) et après avoir accordé aux personnes qui les lui ont fournis une possibilité raisonnable de faire valoir leur point de vue, le Ministre ou une personne qu'il désigne est d'avis qu'il y a perpétration ou danger de perpétration d'une infraction aux articles 31 ou 33, le Ministre ou cette personne peut, par ordonnance, sous réserve des règlements d'application de l'alinéa (3) b) ou, s'il n'y en a pas qui soient en vigueur, avec l'approbation du gouverneur en conseil,

a) soit exiger que soient apportées les modifications et adjonctions aux ouvrages ou entreprises ou aux plans, devis, procédés et programmes les concernant, que le Ministre ou la personne qu'il désigne estime être nécessaires dans les circonstances,

(b) restrict the operation of the work or undertaking,

and, with the approval of the Governor in Council in any case, direct the closing of the work or undertaking for such period as the Minister or a person designated by the Minister considers necessary in the circumstances.

Regulations

(3) The Governor in Council may make regulations

(a) prescribing the manner and circumstances in which any information or material shall be provided to the Minister without request under subsection (1); and

(b) prescribing the manner and circumstances in which the Minister or a person designated by the Minister may make orders under subsection (2) and the terms of such orders.

Consultation with provinces

(4) Where the Minister or a person designated by the Minister proposes to make an order pursuant to subsection (2), he shall offer to consult with

(a) the governments of any provinces that he considers to be interested in any such proposed order, and

(b) any departments or agencies of the Government of Canada that he considers appropriate,

but nothing in this subsection prevents the Minister or a person designated by the Minister from making an interim order pursuant to subsection (2) without such consultation where he considers that immediate action is necessary.

Inspectors and analysts

33.2 (1) For the purposes of this section, the Minister may designate as an inspector or analyst any person who, in the opinion of the Minister, is qualified to be so designated.

Certificate of designation

(2) An inspector shall be furnished with a certificate of his designation as an inspector and on entering any place, premises, vehicle or vessel referred to in subsection (3) shall, if so required, produce the certificate to the person in charge thereof.

Powers of inspectors

(3) An inspector may, at any reasonable time, enter any place, premises, vehicle or vessel, other than a private dwelling place or any part of any place, premises, vehicle or vessel used as a permanent or temporary private dwelling place, where he believes on reasonable and probable grounds that

(a) an offence under section 33 is being, has been or is likely to be committed, or

(b) any work or undertaking described in paragraph 33.1 (1) (a) is being, has been or is likely to be carried on,

and may, where he reasonably believes it is necessary to do so for any purpose related to the enforcement of this section, conduct inspections, including examining any substance or product found therein, taking samples thereof and conducting tests and measurements.

b) soit, restreindre l'exploitation de l'ouvrage ou de l'entreprise,

soit, avec l'approbation du gouverneur en conseil dans tous les cas, ordonner la fermeture de l'ouvrage ou de l'entreprise pour la période que le Ministre ou une personne désignée par ce dernier juge nécessaire dans les circonstances.

Règlement

(3) Le gouverneur en conseil peut, par règlement,

a) prescrire les cas où des documents et des renseignements doivent être fournis au Ministre sans qu'il en fasse la demande en vertu du paragraphe (1) et la façon de les lui fournir; et

b) prescrire les cas où le Ministre ou la personne qu'il désigne peut rendre l'ordonnance prévue au paragraphe (2) et les modalités de fond et de forme applicables.

Consultation

(4) Le Ministre ou la personne qu'il désigne qui se propose de rendre une ordonnance en vertu du paragraphe (2) doit offrir

a) aux gouvernements des provinces qu'il considère intéressés par cette ordonnance, et

b) aux ministères et organismes du gouvernement du Canada qu'il juge à propos,

de les consulter; mais le présent paragraphe n'empêche pas le Ministre ou la personne qu'il désigne de rendre une ordonnance intérimaire en vertu du paragraphe (2) lorsqu'il ou cette personne est d'avis qu'il est nécessaire d'agir immédiatement.

Inspecteurs et analystes

33.2 (1) Le Ministre peut, pour l'application du présent article, nommer des inspecteurs ou des analystes parmi les personnes qu'il juge compétentes.

Certificat de désignation

(2) Un inspecteur doit être pourvu d'un certificat de nomination à cette fonction et, en entrant dans un lieu, un local, un véhicule ou un navire mentionné au paragraphe (3), il doit, s'il en est requis, produire le certificat à la personne qui en a la charge.

Pouvoirs de l'inspecteur

(3) L'inspecteur peut, à toute heure raisonnable, entrer dans un lieu ou un local ou monter à bord d'un véhicule ou d'un navire, à l'exclusion des logements privés et des parties de ces lieux, locaux, véhicules ou navires utilisées comme logements privés permanents ou temporaires, dans les cas où il a des motifs raisonnables et probables de croire

a) qu'une infraction à l'article 33 a été, est, ou sera vraisemblablement commise, ou

b) qu'un ouvrage ou une entreprise visés à l'alinéa 33.1 (1) a) a été, est ou sera vraisemblablement exploité

et il peut, dans les cas où il a des motifs raisonnables de croire que c'est nécessaire pour l'application du présent article, procéder à des inspections et examiner toute substance ou produit trouvés sur les lieux, prélever des échantillons, faire des tests et recueillir des données.

Duty to report

(4) Where, out of the normal course of events, there occurs a deposit of a deleterious substance in water frequented by fish or a serious and imminent danger thereof by reason of any condition, and where any damage or danger to fish habitat or fish or the use by man of fish results or may reasonably be expected to result therefrom, any person who at any material time

(a) owns the deleterious substance or has the charge, management or control thereof, or

(b) causes or contributes to the causation of the deposit or danger thereof,

shall, in accordance with any regulations applicable thereto, report such occurrence to an inspector or such other person or authority as is prescribed by the regulations.

Duty to take all reasonable measures

(5) Every person referred to in paragraph (4) (a) or (b) shall, as soon as possible in the circumstances, take all reasonable measures consistent with safety and with the conservation of fish and fish habitat to prevent any occurrence referred to in subsection (4) or to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result therefrom.

Power to take or direct remedial measures

(6) Where an inspector, whether or not a report has been made under subsection (4), is satisfied on reasonable grounds that there is an occurrence referred to in subsection (4) and that immediate action is necessary in order to carry out any reasonable measures referred to in subsection (5), he may, subject to subsection (7) and the regulations, take any such measures or direct that they be taken by any person referred to in paragraph (4) (a) or (b).

Inconsistent orders

(7) Any requirement or direction of an inspector under this section that is inconsistent with a requirement or order of a pollution prevention officer under the Canada Shipping Act is void to the extent of the inconsistency.

Access to property

(8) For the purposes of subsections (4) to (6), any inspector or other person may enter and have access through any place, premises, vehicle or vessel and may take all reasonable action in order to comply with those subsections or any of them, but nothing in this subsection relieves any person from liability at law for his illegal or negligent acts or omissions or for loss or damage caused to others by such entry, access or action.

Regulations

(9) The Governor in Council may make regulations prescribing

(a) the person or authority to whom or which a report is to be made under subsection (4), the manner in which the report is to be made, the information to be contained therein and the circumstances in which no report is required to be made;

Obligation de faire rapport

(4) Lorsque, hors du cours normal des choses, se produisent le rejet ou l'immersion dans des eaux où vivent des poissons d'une substance nocive ou un risque sérieux et imminent de rejet ou d'immersion et qu'il y a une possibilité raisonnable qu'un danger pour le poisson ou son habitat se produise ou que l'utilisation par l'homme du poisson soit compromise, les personnes qui, aux époques pertinentes,

a) étaient propriétaires de la substance nocive ou en avaient la charge, l'administration ou le contrôle, ou

b) ont causé le rejet, l'immersion ou le risque de rejet ou d'immersion ou y ont contribué,

doivent, conformément aux règlements pertinents, en faire rapport à un inspecteur ou à toute autre personne ou organisme que prévoient les règlements.

Obligation de prendre des mesures correctrices

(5) Les personnes visées aux alinéas (4) a) ou b) doivent, dans les meilleurs délais, vu les circonstances, prendre toutes les mesures correctrices nécessaires, compatibles avec la sécurité et la conservation des poissons de leur habitat, pour réduire ou réparer les dommages qui résultent ou sont susceptibles de résulter de l'événement décrit au paragraphe (4).

Pouvoir de prendre ou d'ordonner des mesures correctrices

(6) Qu'un rapport ait été fait ou non en vertu du paragraphe (4), un inspecteur peut, sous réserve du paragraphe (7) et des règlements, prendre ou ordonner que soient prises par les personnes visées aux alinéas (4) a) ou b) les mesures correctrices mentionnées au paragraphe (5), lorsqu'il est convaincu, en se basant sur des motifs raisonnables, qu'un événement mentionné au paragraphe (4) s'est produit et que ces mesures sont nécessaires.

Directives incompatibles

(7) Les directives qu'un inspecteur donne en vertu du présent article qui sont incompatibles avec les ordres que donne un fonctionnaire chargé de la prévention de la pollution en vertu de la Loi sur la marine marchande du Canada sont nulles dans la limite de cette incompatibilité.

Accès

(8) Aux fins des paragraphes (4) à (6), un inspecteur ou toute autre personne a accès à tout lieu, endroit, véhicule ou navire et peut prendre les mesures raisonnables pour se conformer à ces paragraphes; cependant, rien au présent paragraphe ne limite la responsabilité générale de toute personne pour ses actes ou omissions illégaux ou des pertes ou dommages causés à des tiers lors de ces visites ou suite à ces mesures.

Règlements

(9) Le gouverneur en conseil peut, par règlement, prescrire

a) la personne ou l'organisme à qui doit être envoyé le rapport mentionné au paragraphe (4), la forme de ce rapport, les informations qu'il doit contenir et les cas où il n'est pas nécessaire d'en faire un;

(b) the manner in which inspectors may take any measures or give any directions under subsection (6) and the conditions to which such measures or directions are subject;

(c) the manner and circumstances in which any measures taken or directions given under subsection (6) may be reviewed, rescinded or varied; and

(d) any other matters necessary for or incidental to carrying out the purposes and provisions of this section.

Assistance to inspectors

(10) The owner or person in charge of any place, premises, vehicle or vessel entered by an inspector pursuant to subsection (3) and every person found therein shall give the inspector all reasonable assistance in his power to enable the inspector to carry out his duties and functions under this section and shall furnish the inspector with such information with respect to the administration of this section as he may reasonably require.

Certificate of analyst as proof

(11) Subject to subsections (12) and (13), a certificate purporting to be signed by an analyst stating that he has analyzed or tested a substance or product and stating the result of his analysis or test is admissible in evidence in any prosecution for an offence under section 33 or 33.4 without proof of the signature or official character of the person appearing to have signed the certificate and, in the absence of any evidence to the contrary, is proof of the statements contained in the certificate.

Attendance of analyst

(12) The party against whom there is produced any certificate pursuant to subsection (11) with leave of the court, require the attendance of the analyst for the purposes of cross-examination.

Notice

(13) No certificate shall be received in evidence pursuant to subsection (11) unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate in question.

Obstruction of inspector

33.3 (1) No person shall obstruct or hinder an inspector in the carrying out of his duties or functions under section 33.2.

False statements

(2) No person shall knowingly make a false or misleading statement, either verbally or in writing, to an inspector engaged in carrying out his duties or functions under section 33.2.

Offences and punishment

33.4 (1) Every person who

(a) fails to provide the Minister with any material or information requested pursuant to subsection 33.1 (1) within a reasonable time after the request is made,

(b) fails to provide or submit any material, information or report that is to be provided or submitted under regulations made pursuant to subsection 33.1 (1),

(c) fails to make a report that he is required to make under subsection 33.2 (4),

b) la façon dont doivent être données les directives des inspecteurs en vertu du paragraphe (6) et les conditions qui leur sont applicables;

c) la façon dont peuvent être revues, modifiées ou annulées les mesures correctrices prises ou ordonnées en vertu du paragraphe (6) et les circonstances qui peuvent y donner lieu; et

d) toute autre chose nécessaire à l'application générale du présent article.

Obligations d'assistance

(10) Le propriétaire ou le responsable des lieux, locaux, navires ou autres véhicules où l'inspecteur procède aux visites autorisées par le paragraphe (3) et quiconque s'y trouve doivent, dans la mesure du possible, lui prêter assistance pour lui permettre d'exécuter les fonctions que lui confère le présent article et lui fournir les renseignements qu'il peut raisonnablement exiger concernant l'application de la présente loi.

Certificat de l'analyste

(11) Sous réserve des paragraphes (12) et (13), les certificats apparemment signés par un analyste et attestant qu'il a analysé ou examiné une substance ou un produit et énonçant ses conclusions sont admissibles en preuve dans les poursuites fondées sur une infraction aux articles 33 ou 33.4 et établissent l'exactitude de leur contenu jusqu'à preuve du contraire, sans qu'il soit nécessaire d'authentifier la signature ni d'établir la qualité officielle du signataire.

Comparution de l'analyste

(12) La partie à laquelle sont opposés les certificats prévus au paragraphe (11) peut, avec l'autorisation du tribunal, assigner l'analyste à comparaître pour les contre-interroger.

Préavis

(13) Les certificats ne sont pas admissibles en preuve en vertu du paragraphe (11) si la partie qui se propose de les produire n'a pas donné à la partie adverse un préavis raisonnable de son intention, accompagné d'une copie de ces certificats.

Obstruction faite à un inspecteur

33.3 (1) Nul ne doit faire obstacle à un inspecteur dans l'exercice des fonctions que lui confère l'article 33.2.

Fausses déclarations

(2) Nul ne doit faire sciemment, oralement ou par écrit, une déclaration fausse ou trompeuse à un inspecteur dans l'exercice des fonstions que lui confère l'article 33.2.

Infractions et peines

33.4 (1) Quiconque

a) néglige ou refuse de fournir au Ministre les documents et les renseignements prévus au paragraphe 33.1 (1) dans un délai raisonnable suivant la demande,

b) néglige ou refuse de présenter les documents, les renseignements ou les rapports conformément aux règlements d'application du paragraphe 33.1 (3),

c) néglige de faire le rapport que le paragraphe 33.2 (4) exige de lui;

R.S.C. 1970, c. 17 (1st Supp.)
Statutes of Canada 1976-77, c. 35

S.R.C. 1970, chap. 17 (1^er Supp.)
Statuts du Canada 1976-77, chap. 35

(d) carries on any work or undertaking described in subsection 33.1 (1)

(i) otherwise than in accordance with any material or information relating to the work or undertaking that he provides to the Minister under subsection 33.1 (1),

(ii) otherwise than in accordance with any such material or information as required to be modified by any order of the Minister under paragraph 33.1 (2) (a), or

(iii) contrary to any order made by the Minister under subsection 33.1 (2),

(e) fails to take any reasonable measures that he is required to take under subsection 33.2 (5) or fails to take such measures in the required manner,

(f) fails to comply with a direction of an inspector under subsection 33.2 (6), or any part of such direction, that is not void under subsection 33.2 (7), or

(g) contravenes section 33.3,

is guilty of an offence and

(h) in any case referred to in paragraph (a), (b) or (c), is liable on summary conviction to a fine not exceeding five thousand dollars for a first offence, and not exceeding ten thousand dollars for each subsequent offence, or

(i) in any case referred to in paragraph (d), (e), (f) or (g), is liable on summary conviction to a fine not exceeding twenty-five thousand dollars for a first offence, and not exceeding fifty thousand dollars for each subsequent offence.

Application of section 33

(2) Subsections 33 (6), (7) and (9) apply in respect of an offence under subsection (1) as if it were an offence under section 33.

Matters of proof

(3) For the purpose of any proceedings for an offence under subsection (1) or section 33,

(a) a "deposit" as defined in subsection 33 (11) takes place whether or not any act or omission resulting in the deposit is intentional; and

(b) no water is "water frequented by fish" as defined in subsection 33 (11) where proof is made that at all times material to the proceedings the water is not, has not been and is not likely to be frequented in fact by fish.

REGULATIONS

Regulations

34. The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and in particular, but without restricting the generality of the foregoing, may make regulations

(a) for the proper management and control of the seacoast and inland fisheries;

d) exploite un ouvrage ou une entreprise visés au paragraphe 33.1 (1),

(i) sans se conformer aux documents et aux renseignements fournis au Ministre en vertu du paragraphe 33.1 (1),

(ii) sans se conformer aux documents et renseignements tels que modifiés par l'ordonnance du Ministre en vertu de l'alinéa 33.1 (2) a), ou

(iii) sans respecter l'ordre donné par le Ministre en vertu du paragraphe 33.1 (2),

e) néglige de prendre ou de prendre de la façon requise les mesures correctrices qu'il doit prendre conformément au paragraphe 33.2 (5);

f) néglige ou refuse de se conformer, en tout ou en partie, aux directives données par un inspecteur en vertu du paragraphe 33.2 (6) et qui ne sont pas nulles en vertu du paragraphe 33.2 (7), ou

g) enfreint l'article 33.3,

est coupable d'une infraction et passible, sur déclaration sommaire de culpabilité,

h) dans les cas visés par les alinéas a), b) ou c), d'une amende maximale de cinq mille dollars pour une première infraction et de dix mille dollars pour chaque infraction subséquente, ou

i) dans les cas visés aux alinéas d), e), f) ou g), d'une amende maximale de vingt-cinq mille dollars pour une première infraction et de cinquante mille dollars pour chaque infraction subséquente.

Application de l'article 33

(2) Les paragraphes 33 (6), (7) et (9) s'appliquent aux infractions prévues au paragraphe (1) comme si elles constituaient des infractions à l'article 33.

Présomptions

(3) Dans les procédures fondées sur une infraction au paragraphe (1) ou à l'article 33,

a) l'"immersion" ou le "rejet", définis au paragraphe 33 (11), comprend l'immersion ou le rejet qui résulte d'une action ou abstention non intentionnelle;

b) les "eaux où vivent des poissons", définies au paragraphe 33 (11) ne comprennent pas les eaux où il est établi qu'en fait, les poissons n'y ont pas vécu, n'y vivent pas ou n'y vivront vraisemblablement pas aux époques essentielles considérées dans les procédures.

RÈGLEMENTS

Règlements

34. Le gouverneur en conseil peut édicter des règlements concernant la réalisation des objets de la présente loi et l'application de ses dispositions et, en particulier, peut, sans restreindre la généralité de ce qui précède, édicter des règlements

a) concernant la gestion et la surveillance judicieuses des pêches côtières et des pêches de l'interne;

(b) respecting the conservation and protection of fish

(c) respecting the catching, loading, landing, handling, transporting, possession and disposal of fish

(d) respecting the operation of fishing vessels;

(e) respecting the use of fishing gear and equipment;

(f) respecting the issue, suspension and cancellation of licences and leases;

(g) respecting the terms and conditions under which a lease or licence may be issued;

(h) respecting the obstruction and pollution of any waters frequented by fish;

(i) respecting the conservation and protection of spawning grounds;

(j) respecting the export of fish or any part thereof from Canada;

(k) respecting the taking or carrying of fish or any part thereof from one province of Canada to any other province;

(l) prescribing the powers and duties of persons engaged or employed in the administration or enforcement of this Act and providing for the carrying out of those duties and powers; and

(m) authorizing a person engaged or employed in the administration or enforcement of this Act to vary any close time or fishing quota that has been fixed by the regulations. 1960-61, c. 23, s. 5.

MARINE PLANTS

Prohibition of harvesting of marine plants in certain cases

34.1 Except in accordance with the conditions of a licence issued by the Minister under section 34.2, no person shall harvest marine plants in the coastal waters of Canada in contravention of any regulation made pursuant to paragraph 34.3 (a).

Licences

34.2 The Minister may, on receipt of an application made in accordance with the regulations, issue a licence to the applicant therefor for the harvesting of marine plants in the coastal waters of Canada for a term not exceeding one year and on such conditions relating to

(a) the nature of the gear and equipment to be used in such harvesting,

(b) the manner in which harvesting is to be carried out,

(c) the quantity of marine plants authorized to be harvested thereunder, and

b) concernant la conservation et la protection du poisson;

c) concernant la prise, le chargement, le débarquement, la manutention, le transport, la possession et l'écoulement du poisson;

d) concernant l'exploitation des bateaux de pêche;

e) concernant l'utilisation des appareils et accessoires de pêche;

f) concernant la délivrance, la suspension et l'annulation des permis et baux;

g) concernant les modalités selon lesquelles un bail ou un permis peut être délivré;

h) concernant l'obstruction et la pollution des eaux que fréquente le poisson;

i) concernant la conservation et la protection des frayères;

j) concernant l'exportation, hors du Canada, du poisson ou de toute partie de poisson;

k) concernant la prise ou le transport du poisson ou de toute partie de poisson d'une province du Canada à une autre province;

l) prescrivant les pouvoirs et les fonctions des personnes engagées ou employées à l'administration ou l'application de la présente loi et concernant l'exercice de ces pouvoirs et fonctions; et

m) autorisant une personne engagée ou employée à l'administration ou l'application de la présente loi à modifier une période de temps prohibé ou la quantité maximum de poisson qu'il est permis de prendre, que les règlements ont fixées. 1960-61, c. 23, art. 5.

PLANTES AQUATIQUES

Interdiction dans certains cas, de récolter des plantes aquatiques

34.1 Nul ne doit, si ce n'est en conformité des conditions d'un permis délivré par le Ministre en vertu de l'article 34.2, récolter, dans les eaux côtières du Canada, des plantes aquatiques en contravention d'un règlement établi en conformité de l'alinéa 34.3 a).

Permis

34.2 Le Ministre peut, sur réception d'une demande faite en conformité des règlements, délivrer à qui fait la demande un permis de récolte de plantes aquatiques dans les eaux côtières du Canada pour une période ne dépassant pas un an, aux conditions relatives

a) à la nature des engins et du matériel devant être utilisés pour cette récolte,

b) à la manière dont la récolte doit se faire,

c) à la quantité de plantes aquatiques dont la récolte est autorisée en vertu du permis, et

(d) the area or areas within the coastal waters of Canada where the harvesting is to be carried out or where harvesting may not be carried out,

as he considers to be necessary for the protection and conservation of the marine plant resources of the coastal waters of Canada.

Regulations

34.3 The Governor in Council may make regulations

(a) prohibiting, subject to the conditions of any licence issued by the Minister under section 34.2,

(i) the harvesting of marine plants or of any class of marine plants,

(ii) the harvesting of marine plants or of any class of marine plants in quantities in excess of quantities specified in the regulations, or

(iii) the harvesting of marine plants or of any class of marine plants in a manner specified in the regulations,

in the coastal waters of Canada or any area or areas of the coastal waters of Canada specified in the regulations;

(b) prohibiting, notwithstanding the conditions of any licence, the harvesting of marine plants or of any class of marine plants in any area or areas of the coastal waters of Canada for such period or periods as are specified in any such regulation;

(c) requiring persons to whom licences are issued under section 34.2 to maintain such books and records and to make such returns of information to the Minister as the Governor in Council deems necessary for the enforcement of this Act and the regulations; and

(d) prescribing the fees to be paid for licences issued under section 34.2.

Interpretation

34.4 For the purposes of sections 34.1 to 34.3,

"coastal waters of Canada"

"coastal waters of Canada" means all waters in the fishing zones of Canada, all waters in the territorial sea of Canada and all internal waters of Canada not within the geographical limits of any province;

"harvest"

"harvest" includes cut, take, dredge, rake or otherwise obtain;

"marine plant"

"marine plant" includes all benthic and detached algae, marine flowering plants, brown algae, red algae, green algae and phytoplankton.

Saving

34.5 Nothing in sections 34.1 to 34.4 shall be construed to prevent traditional harvesting of marine plants by aborigines for their use as food.

d) à la ou aux zones des eaux côtières du Canada où la récolte doit se faire ou ne peut se faire,

qu'il estime nécessaires pour la protection et la conservation des réserves de plantes aquatiques des eaux côtières du Canada.

Règlements

34.3 Le gouverneur en conseil peut établir des règlements

a) interdisant, sous réserve des conditions d'un permis délivré par le Ministre en vertu de l'article 34.2,

(i) la récolte de plantes aquatiques ou d'une catégorie de plantes aquatiques,

(ii) la récolte de plantes aquatiques ou d'une catégorie de plantes aquatiques en plus grande quantité que celle que spécifient les règlements, ou

(iii) la récolte de plantes aquatiques ou d'une catégorie de plantes aquatiques d'une façon spécifiée dans les règlements,

dans les eaux côtières du Canada ou dans toute zone ou zones des eaux côtières du Canada spécifiées dans les règlements;

b) interdisant, nonobstant les conditions de n'importe quel permis, la récolte de plantes aquatiques ou d'une catégorie de plantes aquatiques, dans une ou des zones des eaux côtières du Canada, pour la ou les périodes que spécifie un de ces règlements;

c) obligeant les personnes auxquelles des permis sont délivrés en vertu de l'article 34.2 à tenir les livres et registres et à transmettre au Ministre les renseignements que le gouverneur en conseil juge nécessaires pour l'application de la présente loi et des règlements; et

d) prescrivant les droits à payer pour les permis délivrés en vertu de l'article 34.2.

Interprétation

34.4 Aux fins des articles 34.1 à 34.3,

"eaux côtières du Canada"

"eaux côtières du Canada" désigne toutes les eaux des zones de pêche du Canada, toutes les eaux de la mer territoriale du Canada et toutes les eaux intérieures du Canada qui ne se trouvent pas dans les limites géographiques d'une province;

"plante aquatique"

"plante aquatique" comprend toutes les algues bentiques et détachées, plantes aquatiques à fleurs, algues brunes, algues rouges, algues vertes et phytoplancton;

"récolter"

"récolter" comprend le fait de couper, prendre, draguer, râteler ou recueillir d'autre façon.

Réserve

34.5 Rien aux articles 34.1 à 34.4 ne doit s'interpréter comme empêchant la récolte traditionnelle des plantes aquatiques par les aborigènes pour leur alimentation.

POWERS OF FISHERY OFFICERS

Power to search

35. Any fishery officer may search or break open and search any building, vehicle, vessel or place other than a permanent dwelling place where he believes, on reasonable and probable grounds, that any fish taken in contravention of this Act or the regulations, or anything used in contravention thereof, is concealed.

Arrest

36. Any fishery officer, fishery guardian or peace officer may arrest without warrant a person whom he, on reasonable and probable grounds, believes to have committed an offence against this Act or any regulation, or whom he finds committing or preparing to commit an offence against this Act or any regulation. R.S., c. 119, s. 37.

37. Revoked, Statutes of Canada, 1976-77, c. 35.

Interfering with officer

38. Every one who resists or wilfully obstructs any fishery officer or fishery guardian in the execution of his duty, or any person acting in aid of such officer or guardian, is guilty of an offence punishable on indictment, or on summary conviction, and liable if convicted on indictment to a term not exceeding two years imprisonment, and on summary conviction to a term not exceeding six months imprisonment with hard labour or to a fine of one hundred dollars. R.S., c. 119, s. 39.

Entry by fishery officer

39. In the discharge of his duties any fishery officer, fishery guardian or other person or persons accompanying him or authorized to such effect by the fishery officer, may enter upon and pass through or over private property without being liable for trespass. R.S., c. 119, s. 40.

Disputes

40. Disputes between persons relative to fishing limits or claims to fishery stations, or relative to the position and use of nets and other fishing apparatus, shall be settled by the local fishery officer. R.S., c. 119, s. 41.

Distances between fisheries

41. Fishery officers may determine or prescribe the distance between each and every fishery and shall forthwith remove any fishing apparatus or materials that the owner neglects or refuses to remove; and such owner is liable for a violation of this Act, and for the cost of removing such apparatus and materials and any damages that may result therefrom. R.S., c. 119, s. 42.

Boundaries of estuary fishing

42. The Minister, or any fishery officer duly authorized by the Minister, has power to define the boundaries of tidal waters and estuaries and to designate what is the mouth of any river, stream or other water for the purposes of this Act. R.S., c. 119, s. 43.

POUVOIRS DES FONCTIONNAIRES DES PÊCHERIES

Perquisitions

35. Les fonctionnaires des pêcheries peuvent, au besoin par la force, faire des perquisitions dans tout immeuble, véhicule, navire ou lieu autre qu'une résidence permanente où ils croient, en se fondant sur des motifs raisonnables et probables, que se trouvent cachés des poissons pris ou des objets utilisés en contravention à la présente loi ou aux règlements.

Arrestation

36. Tout fonctionnaire des pêcheries, garde-pêche ou agent de la paix peut arrêter sans mandat une personne qu'il croit, pour des motifs raisonnables et vraisemblables, avoir commis une contravention à la présente loi ou à tout règlement, ou qu'il prend en flagrant délit de contravention ou se préparant à commettre une contravention à la présente loi ou à un règlement. S.R., c. 119, art. 37.

37. Abrogé, Status du Canada 1976-77, chap. 35.

Résistance aux fonctionnaires

38. Quiconque résiste ou délibérément suscite des entraves à un fonctionnaire des pêcheries ou garde-pêche dans l'exercice de ses fonctions, ou à toute personne agissant comme aide de ce fonctionnaire ou garde, est coupable de contravention punissable par voie de mise en accusation ou après déclaration sommaire de culpabilité et passible, s'il est reconnu coupable sur une mise en accusation, de deux années d'emprisonnement au plus, et, après déclaration sommaire de culpabilité, de six mois d'emprisonnement au plus avec travaux forcés ou d'une amende de cent dollars. S.R., c. 119, art. 39.

Droit de passage des fonctionnaires des pêcheries

39. Dans l'accomplissement de ses devoirs, tout fonctionnaire des pêcheries, tout garde-pêche ou autres personnes qui l'accompagnent ou autorisées à cet effet par le fonctionnaire des pêcheries, peuvent pénétrer dans une propriété particulière et y passer, sans s'exposer à une poursuite pour violation du droit de propriété. S.R., c. 119, art. 40.

Contestations

40. Sont réglées par le fonctionnaire local des pêcheries, les contestations entre les personnes au sujet des limites de pêcheries ou de réclamations relatives à des stations de pêche ou à la position et à l'usage de filets et autres engins de pêche. S.R., c. 119, art. 41.

Distance entre les pêcheries

41. Les fonctionnaires des pêcheries peuvent déterminer ou prescrire la distance à laisser entre les différentes pêcheries, et ils doivent enlever sur-le-champ tous engins de pêche ou matériaux quelconques que le propriétaire néglige ou refuse d'enlever; et ce propriétaire est coupable de contravention à la présente loi et responsable des frais d'enlèvement de cet engin de pêche et de ces matériaux et de tous dommages qui peuvent en résulter. S.R., c. 119, art. 42.

Limites des pêches dans les estuaires

42. Le Ministre, ou tout fonctionnaire des pêcheries dûment autorisé par lui, a le pouvoir de définir les limites des eaux à marée et estuaires et de désigner ce qui est l'embouchure d'une rivière, d'un cours d'eau, ou de définir toute autre nappe d'eau pour les fins de la présente loi. S.R., c. 119, art. 43.

Statutes of Canada 1976-77, c. 35

Amendment List September 22, 1977

Statuts du Canada 1976-77, chap. 35

Liste de modifications 22 septembre 1977

Gurry grounds

43. Gurry grounds may be designated or defined by any fishery officer. R.S., c. 119, s. 44.

GENERAL

Waters of propagation of fish

44. The Minister may authorize any river or other water to be set apart for the natural or artificial propagation of fish. R.S., c. 119, s. 48.

Special licences for oyster beds

45. Special licences and leases for any term of years may be granted to any person who wishes to plant or form oyster beds in any of the bays, inlets, harbours, creeks or rivers, or between any of the islands on the coast of Canada; and the holder of any such lease or licence has the exclusive right to the oysters produced or found on the beds within the limits of such lease or licence. R.S., c. 119, s. 49.

Authority to provinces to grant leases for oyster cultivation

46. (1) The Governor in Council may, upon such terms and conditions as are agreed upon, authorize the government of any province to grant leases of such areas of the seacoast, bays, inlets, harbours, creeks, rivers and estuaries of such province as the government of such province considers suitable for the cultivation and production of oysters, and any persons to whom such leases are granted by such province, subject to the fishery regulations of Canada, have the exclusive right to the oysters produced or found on the beds within the limits of their respective leases.

Rights of Canada preserved

(2) In the event of such areas, or any part thereof, being in a public harbour, nothing in this section prejudices the right or title of Canada to the enjoyment and use of such harbour for every purpose other than the cultivation and production of oysters. R.S., c. 119, s. 50.

Vacant public property

47. (1) Every subject of Her Majesty may use vacant public property, such as by law is common and accessory to public rights of fishery and navigation for the purpose of landing, salting, curing and drying fish, and may cut wood thereon for such purposes, and no other person shall occupy the same station unless it has been abandoned by the first occupant for twelve consecutive months; and at the expiration of that period any new occupier shall pay the value of the flakes and stages and other property thereon, of which he takes possession, or the buildings and improvements may be removed by the original owner.

Leased property

(2) No property leased or licensed shall be deemed vacant. R.S., c. 119, s. 51.

Places pour jeter les poissons

43. Les endroits où sont jetés les détritus de poisson peuvent être désignés ou définis par tout fonctionnaire des pêcheries. S.R., c. 119, art. 44.

DISPOSITIONS GÉNÉRALES

Rivières pour la propagation du poisson

44. Le Ministre peut autoriser la mise à part de toute rivière ou autre pièce d'eau pour la propagation naturelle ou artificielle du poisson. S.R., c. 119, art. 48.

Permis spéciaux pour les bancs d'huîtres

45. Il peut être accordé des permis et baux spéciaux pour un nombre quelconque d'années à toute personne qui désire établir ou former des huîtrières dans les baies, anses, havres, criques ou rivières, ou entre les îles situées sur les côtes du Canada; et le titulaire de ce bail ou de ce permis a un droit exclusif à l'égard des huîtres produites ou trouvées sur les bancs dans les limites désignées dans le bail ou permis. S.R., c. 119, art. 49.

Autorisation aux provinces d'accorder des baux pour l'ostréiculture

46. (1) Le gouverneur en conseil peut, dans les termes et aux conditions convenus, autoriser le gouvernement d'une province à accorder des baux couvrant telles étendues du littoral de la mer, des baies, anses, havres, criques, rivières et estuaires de cette province que le gouvernement de cette province juge propices à la culture et à la production des huîtres, et toutes les personnes à qui ces baux sont accordés par cette province possèdent, sous réserve des règlements relatifs aux pêcheries du Canada, un droit exclusif sur les huîtres produites ou trouvées sur les bancs compris dans les limites de leurs baux respectifs.

Sauvegarde des droits du Canada

(2) Si lesdites étendues ou l'une de leurs parties sont comprises dans un havre public, nulle disposition du présent article ne porte atteinte au droit ou titre que possède le Canada à la jouissance de ce havre et à son utilisation pour toute autre fin que l'ostréiculture. S.R., c. 119, art. 50.

Terrains publics vacants

47. (1) Tout sujet de Sa Majesté peut utiliser des terrains publics vacants, dont l'usage, en vertu de la loi, est commun et inhérent au droit public de pêche et de navigation, pour y débarquer, saler, préparer et faire sécher le poisson, et il peut y couper du bois pour ces objets; et personne autre ne peut s'installer au même poste ou endroit à moins qu'il n'ait été abandonné par le premier occupant durant douze mois consécutifs; et, à l'expiration de cette période, tout nouvel occupant paie la valeur des séchoirs et plates-formes et autres dispositifs qui s'y trouvent et dont il prend possession, ou bien les constructions et améliorations peuvent être enlevées par leur premier propriétaire.

Propriété sous permis

(2) Nulle propriété affermée ou cédée sous permis n'est censée vacante. S.R., c. 119, art. 51.

Returns of quantity of fish

48. The owner or manager of every fish curing or canning establishment or fresh fish business, and the captain or owner of every fishing vessel, and the owner of every fishing boat, fishing trap, weir or other fishing instrument in Canada, shall, at the request of the Minister or a fishery officer, furnish a true return, covering the period specified by the Minister or such fishery officer, containing the whole or any one or more of the following particulars:

(a) all fish caught;

(b) all fish bought;

(c) all fish packed or canned;

(d) the value of the fish caught, bought, packed or canned;

(e) the number of fishermen employed and their nationality;

(f) the number of shore workers employed;

(g) the number and value of the fishing vessels and boats employed;

(h) the quantity and value of fishing gear used;

(i) the number and value of buildings and fixtures used; and

(j) such other details and particulars as may be required by the Minister or such fishery officer. R.S., c. 119, s. 52.

PROTECTION OF FISHERMEN

Boats on fishing cruises

49. (1) No dory, flat or other boat whatever shall set out from any vessel engaged in deepsea or bank fishing or be launched therefrom for the purpose of fishing with hooks and lines, trawls or other similar appliances, or with intent that the same shall be used in so fishing, or for the purpose of examining trawls, set lines or other similar appliances for fishing, unless there is placed in such boat, to be retained therein during absence from such vessel, a mariner's compass, nor unless there is placed in such boat at least two quarts of drinking water and two pounds of solid food for each man of the crew of such boat.

Compass, fog-horn, etc.

(2) The owner of such vessel shall supply the vessel at the commencement of its voyage with as many serviceable mariner's compasses as it carries boats, in addition to the vessel's compass, and also with the necessary utensils for holding water and with a serviceable fog-horn or trumpet.

Rapports des quantités de poisson

48. Le propriétaire ou gérant de toute usine de salaison ou conserverie de poisson, ou de tout établissement faisant le commerce du poisson frais, et le capitaine ou propriétaire de tout vaisseau de pêche, et le propriétaire d'un bateau de pêche, piège, claie ou autre engin de pêche au Canada, doit, à la demande du Ministre, ou d'un fonctionnaire des pêcheries, fournir un rapport véridique, couvrant la période spécifiée par le Ministre ou ce fonctionnaire des pêcheries et contenant la totalité ou l'un quelconque ou plusieurs des renseignements suivants:

a) tout le poisson pris;

b) tout le poisson acheté;

c) tout le poisson paqué ou mis en conserve;

d) la valeur du poisson pris, acheté, paqué ou mis en conserve;

e) le nombre des pêcheurs employées et leur nationalité;

f) le nombre d'hommes employés sur le rivage;

g) le nombre et la valeur des vaisseaux et bateaux de pêche employés;

h) la quantité et la valeur des appareils de pêche employés;

i) le nombre et la valeur des bâtiments et installations employés, et

j) tels autres détails et renseignements que peuvent exiger le Ministre ou ce fonctionnaire des pêcheries. S.R., c. 119, art. 52.

PROTECTION DES PÊCHEURS

Embarcations détachées

49. (1) Il est interdit de mettre à la mer ou de détacher d'un navire faisant la pêche sur les grands fonds ou sur les bancs, un doris, une plate ou autre embarcation, pour pêcher à la ligne, au traîneau ou avec tout autre engin semblable, soit dans l'intention d'employer l'embarcation pour pêcher de la sorte, soit pour visiter des traîneaux, lignes dormantes ou autres semblables dispositifs de pêche, sans placer sur cette embarcation une boussole qui doit y être gardée jusqu'à ce que l'embarcation soit ramenée au navire, et sans y placer aussi au moins deux pintes d'eau potable et deux livres d'aliments solides pour chaque homme de l'équipage qui monte l'embarcation.

Boussoles, trompe de brouillard, etc.

(2) Le propriétaire du navire doit le munir, à son départ, d'autant de boussoles en bon état, en plus de la boussole du bord, qu'il porte d'embarcations, et aussi des ustensiles nécessaires pour contenir l'eau, et d'une sirène ou trompe de brouillard en bon état.

No clearance without certificate of equipment

(3) No collector or other customs officer shall grant a clearance to such vessel or allow it to go to sea unless the master thereof has a certificate from a fishery officer or other person authorized by the Minister to give such certificates that the vessel is properly equipped with a mariner's compass and suitable utensils for holding water for each boat carried by the vessel and with a serviceable fog-horn or trumpet. R.S., c. 119, s. 53.

OFFENCES AND PENALTIES

Failure to send returns to Minister

50. Every owner or manager of a lobster factory or canning establishment who neglects by the date fixed by the Minister for that purpose, to send to or furnish the fishery officer for the district on the form prescribed by the Minister a statement under oath, showing

(a) the number of fishermen employed, and of the lobster traps used in connection with his factory or canning establishment;

(b) the number of persons employed in such factory or canning establishment, distinguishing the sexes;

(c) the number of cases of lobsters, and the weights thereof, packed during the legal lobster fishing season last concluded and ended; and

(d) such other details and particulars as are required by the Minister;

is liable to a penalty of not less than one hundred dollars and costs, and not more than four hundred dollars and costs. R.S., c. 119, s. 54.

Other offences

51. (1) Every person is guilty of an offence, and shall incur therefor a fine of not less than one hundred dollars and not more than two thousand dollars, recoverable with costs on summary conviction, who at any time, except under licence from the Minister issued under this or any other Act of Parliament,

(a) with intent to fish or to cause any other person to fish with a vessel that uses an "otter" or other trawl of a similar nature for catching fish in the sea, leaves or departs from any port or place in Canada for the purpose of such fishing; or

(b) knowingly brings into Canada any fish taken or caught in the sea beyond Canadian fisheries waters with any vessel that uses an "otter" or other trawl of a similar nature, or any vessel that uses an "otter" or other trawl of a similar nature for catching fish in the sea beyond Canadian fisheries waters, if the leaving or departure from Canada of such vessel constituted an offence under this section, and the fish or vessel so brought in shall be confiscated to Her Majesty for violation of this Act, in the manner provided by section 58.

Aucun congé si le navire n'est pas convenablement équipé

(3) Il est interdit à un receveur ou autre préposé des douanes de donner congé à ce navire ou de lui permettre de prendre la mer à moins que son capitaine n'ait un certificat d'un fonctionnaire des pêcheries, ou d'une autre personne autorisée par le Ministre à donner ces certificats, attestant que le navire est convenablement muni d'une boussole et d'ustensiles appropriés pour contenir l'eau pour chaque embarcation qu'il porte, ainsi que d'une sirène ou trompe de brouillard en bon état. S.R., c. 119, art. 53.

CONTRAVENTIONS ET PEINES

Négligence d'adresser son rapport au Ministre

50. Est passible d'une amende d'au moins cent dollars et des frais et d'au plus quatre cents dollars et des frais, tout propriétaire ou gérant d'une usine ou conserverie de homard qui néglige, à la date fixée par le Ministre à cette fin, d'adresser ou de fournir au fonctionnaire des pêcheries de son district, dans la forme que prescrit le Ministre, une déclaration sous serment mentionnant

a) le nombre des pêcheurs employés et des pièges à homard utilisés pour son usine ou conserverie;

b) le nombre de personnes employées à cette usine ou conserverie, avec mention des sexes;

c) le nombre et le poids des caisses de homards, paqués pendant la dernière saison légale de la pêche du homard qui a pris fin; et

d) tous autres détails et renseignements qu'exige le Ministre. S.R., c. 119, art. 54.

Autres infractions

51. (1) Est coupable d'une infraction et passible de ce chef d'une amende d'au moins cent dollars et d'au plus deux mille dollars, recouvrable avec frais après déclaration sommaire de culpabilité, quiconque à toute époque sauf s'il est muni d'un permis du Ministre, délivré en vertu de la présente ou d'une autre loi du Parlement,

a) avec l'intention de pêcher ou de faire pêcher toute autre personne avec un vaisseau muni d'un chalut à vergue ou de tout autre chalut de même nature pour la prise du poisson en mer, quitte un port ou endroit du Canada dans le but de faire cette pêche; ou

b) sciemment apporte au Canada du poisson pris ou capturé dans la mer au-delà des eaux des pêcheries canadiennes au moyen d'un vaisseau muni d'un chalut à vergue ou de tout autre chalut de même nature, ou amène un vaisseau muni d'un chalut à vergue ou de tout autre chalut de même nature pour prendre du poisson dans la mer au-delà des eaux des pêcheries canadiennes, si le fait de quitter le Canada ou d'en partir constitue pour ce vaisseau une infraction visée par le présent article; et le poisson ainsi apporté ou le vaisseau ainsi amené doit être confisqué au profit de Sa Majesté pour infraction à la présente loi, de la manière prévue à l'article 58.

"Otter trawl" defined

(2) For the purposes of subsection (1), an "otter" or other trawl of a similar nature includes a "Danish seine" and "Scottish seine".

Fishing restricted to twelve mile limit

(3) No vessel referred to in paragraph (1) (a) or (b) shall carry on fishing operations from or to any Canadian port or ports, unless it restricts its fishing operations to waters that are at least twelve miles distant from the nearest shore on the Atlantic seacoast of Canada or to fisheries that are such greater distances from that shore as may be prescribed under subsection (6), and the proof that such fishing operations are so restricted at all times lies on the captain of the vessel, but this subsection does not apply to small draggers operated by inshore fishermen if exempted from the provisions of this subsection by special permit, which the Minister is hereby authorized to issue for that purpose.

Exception

(4) The Minister may also, by order, exempt any class of dragger or trawler defined by the regulations from the operation of subsection (3) in respect of any area on the Atlantic seacoast of Canada.

Licences

(5) The Minister may determine the number of such vessels that shall be eligible to be licenced.

Regulations

(6) Regulations may be made under section 34

(a) prescribing the form of licence;

(b) specifying the evidence to be submitted with an application for a licence;

(c) fixing the conditions under which a licence shall be issued;

(d) making any other provisions respecting licences;

(e) classifying, for the purpose of this section, the vessels referred to in subsection (1) according to length, tonnage or otherwise;

(f) defining, for the purposes of this Act, the expression "small dragger"; and

(g) prescribing, for the purpose of subsection (3), either generally or in respect of any specific waters, distances greater than twelve miles from the nearest shore on the Atlantic seacoast of Canada.

Burden of proof

(7) The burden of proving absence of intent or knowledge, when intent or knowledge is necessary to constitute an offence under this section, lies upon the person accused, and intent or knowledge shall be presumed unless negatived by proof. R.S., c. 119, s. 55; 1960-61, c. 23, s. 8; 1964-65, c. 22, s. 12.

Définition de "chalut à vergue"

(2) Pour l'application du paragraphe (1), "chalut à vergue ou tout autre chalut de même nature" comprend la "senne danoise" et la "senne écossaise".

Pêche dans une limite de douze milles

(3) Il est interdit à tout navire mentionné aux alinéas (1) a) ou b) de faire des opérations de pêche à destination ou en provenance d'un ou de plusieurs ports canadiens, à moins qu'il ne restreigne ses opérations de pêche aux eaux qui sont au moins à douze milles de distance de la rive la plus rapprochée sur le littoral atlantique du Canada ou aux pêcheries plus éloignées de la côte de la distance qui peuvent être prescrites en vertu du paragraphe (6); la preuve que ces opérations de pêche sont ainsi restreintes incombe toujours au capitaine du vaisseau; mais le présent paragraphe ne s'applique pas aux petits chalutiers exploités par des pêcheurs près de la côte s'ils sont soustraits aux dispositions du présent paragraphe par un permis spécial que le Ministre est autorisé par les présentes à émettre à cette fin.

Exception

(4) Par ordonnance, le Ministre peut également soustraire toute catégorie de chalutiers, petits ou grands, que définissent les règlements, à l'application du paragraphe (3) relativement à toute zone sur le littoral atlantique du Canada.

Permis

(5) Le Ministre peut déterminer le nombre de ces vaisseaux qui peuvent obtenir le permis.

Règlements

(6) Des règlements peuvent être édictés sous le régime de l'article 34

a) prescrivant la formule du permis;

b) spécifiant la preuve à soumettre avec la demande d'un permis;

c) fixant les conditions auxquelles un permis est délivré;

d) établissant toutes autres dispositions concernant les permis;

e) classifiant, aux fins du présent article, les vaisseaux mentionnés au paragraphe (1) selon la longueur, le tonnage ou d'autres barèmes;

f) définissant, aux fins de la présente loi, l'expression "petit chalutier"; et

g) prescrivant, aux fins du paragraphe (3), d'une façon générale ou spécifique à certaines eaux, des distances supérieures à douze milles de la rive la plus rapprochée sur le littoral atlantique du Canada.

Fardeau de la preuve

(7) Il incombe à la personne accusée d'établir la preuve de son absence d'intention ou de connaissance, lorsque l'intention ou la connaissance est nécessaire pour constituer une infraction visée par le présent article, et l'intention ou la connaissance doit être présumée à moins qu'elle soit niée par la preuve. S.R., c. 119, art. 55; 1960-61, c. 23, art. 8; 1964-65, c. 22, art. 12.

Refusal or neglect to provide fishway

52. Every owner or occupier of a slide, dam or other obstruction across or in any stream,

(a) where the Minister determines it to be necessary for the public interest that a canal around a dam or a fishpass therein should exist, who, after three days notice in writing, neglects or refuses to provide a durable and efficient fishway or canal, or who neglects or refuses to maintain the same in a good and effective condition in such place and of such form and capacity as will admit of the passage of fish;

(b) where the Minister requires the installation and maintenance of such fish stops or diverters as will in his opinion be adequate to prevent the destruction of fish and to assist in providing for their ascent, who after three days notice in writing, neglects or refuses to provide the same; or

(c) where the Minister determines it to be necessary to provide a sufficient flow of water over the spillway or crest, with connecting sluices into the river below, to permit the safe and unimpeded descent of fish, who after three days notice in writing, neglects or refuses to provide such; is liable to a penalty of not less than four dollars and not more than twenty dollars for each day or part of a day during which such notice is not complied with is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars for each day or part of a day during which such notice is not complied with.

Minister may assess owner of obstruction

53. (1) Where the Minister determines that the provision, which he deems necessary for the public interest, of an efficient fishway or canal around any slide, dam or other obstruction is not feasible or that the spawning areas above such slide, dam or other obstruction are destroyed by reason of any such obstruction, the owner or occupier of any such slide, dam or other obstruction shall from time to time pay to the Receiver General such lump sum or annual sum of money as may be assessed against him by the Minister for the purpose of constructing, operating and maintaining such complete hatchery establishment as will, in the opinion of the Minister, meet the requirements for maintaining the annual return of migratory fish.

Assessment recoverable upon suit in Exchequer Court

(2) Such lump sum or annual sum shall be payable at such time or times as the Minister may direct and may be sued for and recovered with full costs of suit in the Exchequer Court of Canada. R.S., c. 119, s. 57.

Refus ou omission d'établir une échelle à poisson

52. Tout propriétaire ou occupant d'une glissoire, d'un barrage ou autre obstacle en travers d'un cours d'eau ou dans un cours d'eau,

a) qui, après trois jours d'avis par écrit et alors que le Ministre juge nécessaire, dans l'intérêt public, qu'il y ait une passe migratoire contournant un barrage ou une échelle à poisson dans ce barrage, néglige ou refuse de construire une échelle ou passe migratoire durable et efficace, ou qui refuse ou néglige de l'entretenir en bon état de fonctionnement à l'endroit, sur le modèle et suivant les dimensions qui permettront au poisson d'y passer;

b) qui, après trois jours d'avis par écrit et alors que le Ministre exige l'installation et l'entretien d'appareils pour arrêter ou détourner le poisson, lesquels, à son avis, suffiront à empêcher la destruction du poisson et favoriseront sa montée, néglige ou refuse d'y pourvoir; ou

c) qui, après trois jours d'avis par écrit et alors que le Ministre juge nécessaire de pourvoir à un débit suffisant sur la passe-déversoir ou crête, avec canaux raccordeurs dans la rivière en aval afin de permettre au poisson de descendre sans danger et sans difficulté, néglige ou refuse d'y pourvoir; est passible d'une amende d'au moins quatre dollars et d'au plus vingt dollars pour chaque jour ou partie de jour d'inobservation de cet avis est coupable d'une infraction et passible, sur déclaration sommaire de culpabilité, d'une amende d'au plus cinq mille dollars pour chaque jour ou partie du jour d'inobservation de cet avis.

Le Ministre peut imposer paiement au propriétaire de l'obstacle

53. (1) Lorsque le Ministre estime que l'établissement, qu'il juge nécessaire dans l'intérêt public, d'une échelle à poisson ou passe migratoire efficace contournant quelque glissoire, barrage ou autre obstacle n'est pas praticable, ou que les frayères en amont de cette glissoire, de ce barrage ou autre obstacle sont détruites à cause d'un tel obstacle, le propriétaire ou l'occupant d'une glissoire, d'un barrage ou autre obstacle de cette nature doit à l'occasion verser au receveur général la somme globale ou la somme annuelle d'argent que le Ministre peut fixer et lui enjoindre de verser, aux fins de construire, de mettre en service et d'entretenir l'établissement complet de pisciculture qui, de l'avis du Ministre, suffira à assurer le retour annuel du poisson migrateur.

Montant recouvrable devant la Cour de l'Echiquier

(2) Cette somme globale ou somme annuelle doit être versée à l'époque ou aux époques que le Ministre peut prescrire, et peut être recouvrée en justice avec pleins dépens devant la Cour de l'Echiquier du Canada. S.R., c. 119, art. 57.

Use of rockets or explosives

54. Every person who hunts or kills fish or marine animals of any kind, other than porpoises, whales, walruses, sea lions and hair seals, by means of rockets, explosive materials or explosive projectiles or shells, is liable to a penalty of not less than one hundred dollars and costs, or to imprisonment for not less than three months, or to both, and not more than five hundred dollars and costs or to imprisonment for six months or to both. R.S., c. 119, s. 58.

Neglect or refusal to provide and maintain fish guards

55. Every owner or occupier of a water intake, ditch, channel or canal in Canada, constructed or adapted for conducting water from any Canadian fisheries waters for irrigating, manufacturing, power generation, domestic or other purposes, who

(a) neglects or refuses to provide and maintain in a good and sufficient state of repair at its entrance or intake a fish guard, screen covering or netting with meshes of such dimensions as the Minister may prescribe, approved by the Minister or such officer as the Minister from time to time appoints to examine it, and so fixed as to prevent the passage of fish from any Canadian fisheries waters into such water intake, ditch, channel or canal,

(b) permits the removal of the fish guard, screen, covering or netting referred to in paragraph (a) except for renewal or repair, or

(c) during the time the renewal or repair referred to in paragraph (b) is being effected, neglects or refuses to close the sluice or gate at the intake or entrance of such water intake, ditch, channel or canal, so as to prevent the passage of fish into such water intake, ditch, channel or canal,

is, after three days notice in writing from the Minister or a fishery officer, guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars for each day or part of a day during which such offence continues.

Injuring or fishing in place leased for the propagation of fish

56. Every person who wilfully destroys or injures any place set apart under the authority of the Minister for the propagation of fish, or who fishes therein without written permission from a fishery officer, or uses therein any fishing light or other implement for fishing during the period for which such waters are so set apart, is liable to a penalty of not less than fifty dollars and costs and not more than two hundred dollars and costs, and, in default of payment, to imprisonment for a term not less than six months, and not more than twelve months or to both fine and imprisonment. R.S., c. 119, s. 62.

57. Repealed R.S.C. 1970, c. 17 (1st Supp.)

Usage de fusées ou d'explosifs

54. Quiconque chasse ou tue du poisson ou des animaux marins d'une espèce quelconque, qui ne sont pas des marsouins, des baleines, des morses, des lions marins et des phoques à poil, au moyen de fusées, matières explosives ou projectiles explosifs ou bombes, est passible d'une amende d'au moins cent dollars et des frais, ou d'un emprisonnement de trois mois au moins, ou des deux peines, et d'au plus cinq cents dollars et des frais ou d'un emprisonnement de six mois, ou des deux peines. S.R., c. 119, art. 58.

Négligence ou refus d'établir et entretenir des garde-poissons

55. Le propriétaire ou occupant d'une prise d'eau, d'un fossé, chenal ou canal construit ou disposé au Canada, pour conduire l'eau de quelque eau des pêcheries canadiennes pour des fins d'irrigation, de génération d'énergie, ou pour fins industrielles, domestiques ou autres, qui

a) néglige ou refuse d'établir et entretenir en bon état à son entrée ou point de dérivation un garde-poissons, grillage, filet ou treillis de fil métallique muni de mailles ou trous des dimensions que le Ministre peut prescrire, approuvé par le Ministre ou le fonctionnaire qu'il charge à l'occasion de l'examiner, et placé de manière à empêcher le passage du poisson de toute eau des pêcheries canadiennes dans cette prise d'eau, ce fossé, ce chenal ou ce canal,

b) permet que le garde-poissons, le grillage, le filet ou le treillis mentionné à l'alinéa a) soit enlevé autrement que pour le remplacer ou le réparer, ou

c) pendant la durée de la réfection ou réparation mentionnée à l'alinéa b) refuse ou néglige de tenir fermée la porte ou vanne de l'entrée ou du point de dérivation de cette prise d'eau, de ce fossé, chenal ou canal de façon à empêcher le passage du poisson dans la prise d'eau, le fossé, chenal ou canal,

devient, trois jours après avoir reçu un avis écrit du Ministre ou d'un fonctionnaire des pêcheries, coupable d'une infraction et passible, sur déclaration sommaire de culpabilité, d'une amende d'au plus cinq mille dollars pour chaque journée ou fraction de journée d'infraction.

Dommage ou pêche dans un endroit réservé pour la propagation du poisson

56. Quiconque détruit ou endommage volontairement un endroit réservé à la pisciculture sous l'autorité du Ministre, ou y pêche, sans une permission par écrit d'un fonctionnaire des pêcheries, ou s'y sert de flambeaux ou autres engins de pêche pendant le temps où lesdites eaux sont ainsi réservées, est passible d'une amende d'au moins cinquante dollars et des frais et d'au plus deux cents dollars et des frais, et, à défaut de paiement, d'un emprisonnement d'au moins six mois et d'au plus douze mois, ou des deux peines. S.R., c. 119, art. 62.

57. Abrogé S.R.C. 1970 chap. 17 (1^er^ Supp.)

Seizure of vessels, etc.

58. (1) A fishery officer may seize any fishing vessel, vehicle, fishing gear, implement, appliance, material, container, goods, equipment or fish where the fishery officer on reasonable grounds believes that

(a) the fishing vessel, vehicle, fishing gear, implement, appliance, material, container, goods or equipment has been used in connection with the commission of an offence against this Act or the regulations;

(b) the fish or any part thereof have been caught, taken, killed, transported, bought, sold or had in possession contrary to any provision of this Act or the regulations; or

(c) the fish or any part thereof have been intermixed with fish referred to in paragraph (b).

Custody of seized vessels, etc.

(2) Subject to this section, any vessel, vehicle, article, goods or fish seized pursuant to subsection (1) shall be retained in the custody of the fishery officer making the seizure or shall be delivered into the custody of such person as the Minister directs.

Perishable goods

(3) Where, in the opinion of the person having custody of an article, goods or fish seized pursuant to subsection (1), that article, goods or fish will rot, spoil or otherwise perish, that person may sell the article, goods or fish in such manner and for such price as that person may determine.

Proceeds of sale

(4) The proceeds of a sale referred to in subsection (3) shall be paid to the Receiver General or shall be deposited in a chartered bank to the credit of the Receiver General.

Minister or court may order forfeiture

(5) Where a person is convicted of an offence under this Act or the regulations, the Minister or the convicting court or judge may, in addition to any punishment imposed, order that

(a) any vessel, vehicle, article, goods or fish seized pursuant to subsection (1), or

(b) the whole or any part of the proceeds of a sale referred to in subsection (3),

be forfeited, and upon such order being made the vessel, vehicle, article, goods, fish or proceeds so ordered to be forfeited, are forfeited to Her Majesty in right of Canada.

Forfeiture where ownership not ascertainable

(6) Notwithstanding subsection (5), where the ownership of any fishing gear, implement, appliance, material, container, goods, equipment or fish seized pursuant to subsection (1) cannot, at the time of the seizure, be ascertained by the fishery officer by whom the seizure is made, the fishing gear, implement, appliance, material, container, goods, equipment or fish are upon the seizure thereof forfeited to Her Majesty.

Saisie des bateaux, etc.

58. (1) Un fonctionnaire des pêcheries peut saisir tout bateau de pêche, véhicule, engin de pêche, outil, accessoire, objet, contenant, effet, matériel ou poisson si, en se fondant sur des motifs raisonnables, il croit

a) que le bateau de pêche, le véhicule, l'engin de pêche, l'outil, l'accessoire, l'objet, le contenant, l'effet ou le matériel a été utilisé relativement à la perpétration d'une infraction à la présente loi ou aux règlements;

b) que le poisson ou toute partie de poisson ont été pris, capturés, tués, transportés, achetés, vendus ou détenus en possession contrairement à quelque disposition de la présente loi ou des règlements; ou

c) que le poisson ou toute partie de poisson ont été mêlés à du poisson mentionné à l'alinéa b).

Garde de vaisseaux saisis, etc.

(2) Sous réserve du présent article, les vaisseaux, véhicules, articles ou effets, ou le poisson, dont la saisie a été faite conformément au paragraphe (1), doivent demeurer en la garde du fonctionnaire des pêcheries qui a fait la saisie ou être remis à la garde de la personne que désigne le Ministre.

Effets périssables

(3) Lorsqu'elle croit qu'un article, effet ou poisson saisi conformément au paragraphe (1) va pourrir, se gâter ou autrement se détériorer, la personne qui en a la garde peut vendre cet article, effet ou poisson de la manière et au prix qu'elle détermine.

Produit de la vente

(4) Le produit d'une vente mentionnée au paragraphe (3) doit être versé au receveur général ou être déposé dans une banque à charte au crédit de ce dernier.

Le Ministre peut ordonner la confiscation

(5) Le Ministre, le tribunal ou le juge peuvent, outre les peines imposées à la personne déclarée coupable d'une infraction à la présente loi ou aux règlements, ordonner que

a) tout vaisseau, véhicule, article, effet ou poisson, saisis conformément au paragraphe (1), ou

b) le produit global ou partiel d'une vente, dont fait mention le paragraphe (3),

soient confisqués, et, dès qu'est rendue une telle ordonnance, le vaisseau, le véhicule, l'article, l'effet, le poisson ou le produit de la vente, dont la confiscation est ainsi ordonnée, sont confisqués au profit de Sa Majesté du chef du Canada.

Il y a confiscation si le droit de propriété ne peut pas être établi

(6) Nonobstant le paragraphe (5), lorsque le droit de propriété relatif à tout engin de pêche, outil, accessoire, objet, contenant, effet, matériel ou poisson, dont la saisie a été faite en vertu du paragraphe (1), ne peut pas, au moment de la saisie, être identifié par le fonctionnaire des pêcheries qui a fait la saisie, l'engin de pêche, l'outil, l'accessoire, l'objet, le contenant, l'effet, le matériel ou le poisson sont, dès leur saisie, confisqués au profit de Sa Majesté.

Re-delivery on bond

(7) Where any vessel, vehicle article, goods or fish have been seized under subsection (1) and proceedings in respect of the alleged offence have been instituted, the court or judge may, except in the case of any article, goods or fish forfeited under subsection (6), order re-delivery thereof to the accused upon security by bond, with two sureties, in an amount and form satisfactory to the Minister, being given to Her Majesty or upon security of a cash deposit, in an amount satisfactory to the Minister, being given to Her Majesty.

Vessel or goods to be returned unless proceedings instituted

(8) Any vessel, vehicle, article, goods or fish seized under subsection (1) or the proceeds realized from a sale thereof under subsection (3), except any article, goods or fish forfeited under subsection (6), shall be returned or paid to the person from whom the vessel, vehicle, article, goods or fish were taken if the Minister decides not to institute a prosecution in respect of the alleged offence, and in any event, shall be returned or paid upon the expiration of three months from the day of the seizure unless before that time proceedings in respect of the alleged offence are instituted.

Disposal of forfeited vessel, etc.

(9) Except as provided in section 59, any vessel, vehicle, article, goods or fish forfeited under subsection (5) or (6) shall, after the expiration of thirty days from the date of the forfeiture, be disposed of as the Minister directs.

Disposal of forfeited lobster trap

(10) Notwithstanding subsection (9), any lobster trap forfeited under subsection (6) may, at the time of forfeiture, be disposed of as the Minister directs.

Return of vessel or goods if no forfeiture ordered

(11) Where any vessel, vehicle, article, goods or fish have been seized pursuant to subsection (1) and proceedings in respect of the offence have been instituted, but the vessel, vehicle, article, goods or fish or any proceeds realized from the sale thereof under subsection (3) are not, at or within thirty days after the final conclusion of the proceedings, ordered to be forfeited under subsection (5), and have not been forfeited under subsection (6), they shall be returned forthwith, or the proceeds shall be paid forthwith, to the person from whom the vessel, vehicle, article, goods or fish were taken, unless there has been a conviction and a penalty imposed, in which case the vessel, vehicle, article, goods or fish may be detained until the penalty is paid, or the vessel, vehicle, article, goods or fish may be sold under execution in satisfaction of the penalty, or the proceeds realized from a sale of any article, goods or fish pursuant to subsection (3) may be applied in payment of the penalty.

Remise sur cautionnement

(7) Lorsqu'un vaisseau, véhicule, article, effet ou poisson ont été saisis conformément au paragraphe (1) et que des poursuites relatives à la prétendue infraction ont été entamées, le tribunal ou le juge peut, sauf dans le cas de tout article, effet ou poisson confisqués en vertu du paragraphe (6), ordonner la remise des choses saisies à l'accusé à condition que soit fournie à Sa Majesté la garantie d'une obligation, deux personnes se rendant caution, selon le montant et la forme que le Ministre juge satisfaisants, ou que soit fournie à Sa Majesté la garantie d'un dépôt au comptant, selon le montant que le Ministre juge satisfaisant.

Remise du vaisseau ou des effets si des poursuites ne sont pas entamées

(8) Sauf les articles, effets ou poissons confisqués sous le régime du paragraphe (6), tout vaisseau, véhicule, article, effet ou poisson, saisis en vertu du paragraphe (1), doivent être remis, ou le produit de la vente de ces choses ainsi que le prévoit le paragraphe (3) doit être versé, à la personne à qui le vaisseau, véhicule, article, effet ou poisson ont été pris si le Ministre décide de ne pas entamer de poursuites relatives à la prétendu infraction et doivent, de toute façon faire l'objet d'une remise, en nature ou en argent, à l'expiration de trois mois à compter de la date de la saisie, à moins qu'avant l'expiration de ce délai des poursuites visant la prétendue infraction n'aient été entamées.

Comment disposer des vaisseaux confisqués, etc.

(9) Sauf ce que prévoit l'article 59, il doit être disposé, ainsi qu'en ordonne le Ministre, des vaisseaux, véhicules, articles, effets ou poissons confisqués en vertu du paragraphe (5) ou (6), après l'expiration de trente jours à compter de la date de la confiscation.

Comment disposer des casiers à homards confisqués

(10) Nonobstant le paragraphe (9), il peut être disposé, ainsi qu'en ordonne le Ministre, des casiers à homards confisqués en vertu du paragraphe (6), au moment de la confiscation.

Remise du vaisseau ou effets si la confiscation n'est pas ordonée

(11) Lorsqu'un vaisseau, véhicule, article, effet ou poisson ont été saisis en conformité du paragraphe (1) et que des poursuites relatives à l'infraction ont été entamées, mais que dans les trente jours de la conclusion définitive des poursuites la confiscation du vaisseau, véhicule, article, effet, poisson ou produit de la vente des susdits, faite sous le régime du paragraphe (3), n'a pas été ordonnée en vertu du paragraphe (5) et que les choses susdites n'ont pas été confisquées aux termes du paragraphe (6), ces choses doivent être retournées sans délai, ou le produit de la vente doit être versé sans délai, à la personne à qui le vaisseau, véhicule, article, effet ou poisson ont été pris, à moins qu'il n'y ait eu déclaration de culpabilité et qu'une peine n'ait été infligée, auquel cas le vaisseau, véhicule, article, effet ou poisson peuvent être détenus jusqu'à l'acquittement de la peine, ou le vaisseau, véhicule, article, effet ou poisson peuvent être vendus par adjudication forcée en satisfaction de la peine, ou le produit obtenu d'une vente de tout article, effet ou poisson en conformité du paragraphe (3) peut être affecté au paiement de la peine.

Release of seized fish

(12) Notwithstanding anything contained in this section, a fishery officer may, at the time of seizure, return to the water any fish seized pursuant to subsection (1) that the fishery officer believes to be alive. 1960-61, c. 23, s. 10.

Definitions

59. (1) In this section

"court of appeal"

"court of appeal" means, in the province in which an order under this section is made, the court of appeal for that province as defined in section 2 of the Criminal Code;

"judge"

"judge" means

(a) in the Province of Quebec, a judge of the Superior Court for the district in which the vessel, vehicle, article, goods or fish in respect of which an application for an order under this section is made, were seized.

(b) in the Province of Newfoundland and Prince Edward Island, the Yukon Territory and the Northwest Territories, a judge of the Supreme Court, or

(c) in any other province, a judge of the county or district in which any such vessel, vehicle, article, goods or fish were seized.

Application by person claiming interest

(2) Where any vessel, vehicle, article, goods or fish are forfeited to Her Majesty under subsection 58 (5) or (6), any person (other than a person convicted of the offence that resulted in the forfeiture or a person in whose possession the vessel, vehicle, article, goods or fish were when seized) who claims an interest in the vessel, vehicle, article, goods or fish as owner, mortgagee, lien-holder or holder of any like interest may, within thirty days after such forfeiture, apply by notice in writing to a judge for an order pursuant to subsection (5).

Date of hearing

(3) The judge to whom an application is made pursuant to subsection (2) shall fix a day not less than thirty days after the date of filing of the application for the hearing thereof.

Notice

(4) The applicant shall serve a notice of the application and of the hearing upon the Minister at least fifteen days before the day fixed for the hearing.

Order by judge

(5) Where, upon the hearing of an application, it is made to appear to the satisfaction of the judge,

(a) in the case of a forfeiture under subsection 58 (5), that the applicant is innocent of any complicity in the offence that resulted in the forfeiture and of any collusion in relation to that offence with the person who was convicted of the offence;

Mise à l'eau du poisson

(12) Nonobstant toute disposition du présent article, un fonctionnaire des pêcheries peut lors de la saisie remettre à l'eau tout poisson qui a été saisi aux termes du paragraphe (1) et qui, à son avis, est vivant. 1960-61, c. 23, art. 10.

Définitions

59. (1) Au présent article

"cour d'appel"

"cour d'appel" désigne, dans la province où une ordonnance prévue au présent article est rendue, la cour d'appel pour cette province selon la définition qu'en donne l'article 2 du Code criminel;

"juge"

"juge" désigne

a) dans la province de Québec, un juge de la Cour supérieure du district où le vaisseau, véhicule, article, effet ou poisson, à l'égard desquels est faite une demande d'ordonnance aux termes du présent article, ont été saisis,

b) dans les provinces de Terre-Neuve et de l'Île-du-Prince-Édouard, le territoire du Yukon et les territoires du Nord-Ouest, un juge de la Cour suprême, ou

c) dans les autres provinces, un juge de la cour de comté ou de district pour le comté ou le district où a été opérée la saisie de ces vaisseau, véhicule, marchandises ou poissons.

Demande faite par la personne qui revendique un droit

(2) Lorsqu'un vaisseau, véhicule, article, effet ou poisson sont confisqués au profit de Sa Majesté aux termes du paragraphe 58 (5) ou (6), toute personne (autre qu'une personne déclarée coupable de l'infraction ayant entraîné la confiscation ou qu'une personne en la possession de qui le vaisseau, véhicule, article, effet ou poisson se trouvaient au moment où ils ont été saisis) qui prétend avoir un intérêt dans le vaisseau, véhicule, article, effet ou poisson, à titre de propriétaire, de créancier hypothécaire, de détenteur de privilège ou de détenteur de tout semblable droit, peut, dans les trente jours qui suivent cette confiscation, demander au moyen d'un avis écrit à un juge de rendre une ordonnance en conformité du paragraphe (5).

Date de l'audition

(3) Le juge à qui une demande est faite conformément au paragraphe (2) doit fixer, pour l'audition de la demande, une date postérieure par au moins trente jours à la production de cette demande.

Avis

(4) Le requérant doit signifier au Ministre un avis de la demande et de l'audition au moins quinze jours avant la date fixée pour l'audition.

Ordonnance du juge

(5) Si, à l'audition d'une demande, il est établi à la satisfaction du juge,

a) dans le cas d'une confiscation prévue par le paragraphe 58 (5), qu'il n'y a eu, à l'égard de l'infraction qui a entraîné la confiscation, aucune complicité ou collusion entre le requérant et la personne déclarée coupable de ladite infraction;

(b) in the case of a forfeiture under subsection 58 (6), that the applicant is innocent of any complicity in the alleged offence that resulted in the forfeiture and of any collusion in relation to that offence with any person who may have committed the offence; and

(c) that the applicant exercised all reasonable care in respect of the person permitted to obtain the possession of the vessel, vehicle, article, goods or fish to satisfy himself that they were not likely to be used contrary to this Act or the regulations, or, in the case of a mortgagee or lien-holder, that he exercised such care with respect to the mortgagor or the lien-giver;

the applicant is entitled to an order declaring that his interest is not affected by such forfeiture and declaring the nature and extent of his interest.

Appeal

(6) The applicant or the Minister may appeal to the court of appeal from an order made under subsection (5) and the appeal shall be asserted, heard and decided according to the ordinary procedure governing appeals to the court of appeal from orders or judgments of a judge.

Application to Minister

(7) The Minister shall, upon application made to him by any person who has obtained a final order under this section,

(a) except in the case of any article, goods or fish disposed of pursuant to subsection 58 (3), direct that the vessel, vehicle, article, goods or fish to which the interest of the applicant relates be returned to the applicant; or

(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to him.

Exception

(8) This section does not apply to

(a) any lobster trap disposed of under subsection 58 (10), or

(b) any fish that have been returned to the water pursuant to subsection 58 (12). 1960-61, c. 23, s. 10.

Successive days separate offences

60. Should any nets, seines, or other fishing apparatus be set or used in violation of this Act or any regulation for more than one day, then each day during which such seines, nets, or other fishing apparatus remain so set or used constitutes a separate offence, and may be punished accordingly; and should any other violation of this Act, or of any regulation, continue for more than one day, then each day during which such violation continues constitutes a separate offence, and may be punished as such. R.S., c. 119, s. 65.

b) dans le cas d'une confiscation prévue par le paragraphe (58 (6), qu'il n'y a eu, à l'égard de la prétendue infraction qui a entraîné la confiscation, aucune complicité ou collusion entre le requérant et toute personne qui a pu commettre ladite infraction; et

c) que le requérant a exercé tout le soin raisonnable à l'égard de la personne à qui il a été permis d'obtenir la possession du vaisseau, véhicule, article, effet ou poisson pour se convaincre que ces choses ne seraient pas vraisemblablement utilisées en violation de la présente loi ou des règlements, ou, dans le cas d'un créancier hypothécaire ou d'un détenteur de privilège, qu'il a exercé ce soin à l'égard du débiteur hypothécaire ou du débiteur assujetti à un privilège;

le requérant a droit à ce que soit rendue une ordonnance portant que son intérêt n'est pas atteint par cette confiscation et établissant la nature et l'étendue de son intérêt.

Appel

(6) Le requérant ou le Ministre peut interjeter appel, auprès de la cour d'appel, d'une ordonnance rendue aux termes du paragraphe (5). L'exercice de ce droit d'appel, ainsi que l'audition dudit appel et la décision en l'espèce sont assujettis à la procédure ordinaire régissant les appels d'ordonnances ou de jugements d'un juge, portés devant la cour d'appel.

Demande au Ministre

(7) Le Ministre doit, sur demande à lui faite par toute personne qui a obtenu une ordonnance finale sous le régime du présent article.

a) sauf dans le cas de tout article, effet ou poisson dont il a été disposé conformément au paragraphe (58 (3), ordonner que le vaisseau, véhicule, article, effet ou poisson auquel se rattache l'intérêt du requérant soient retournés à celui-ci; ou

b) ordonner qu'un montant égal à la valeur de l'intérêt du requérant, telle que l'a établie l'ordonnance, soit versé à ce dernier.

Exception

(8) Le présent article ne s'applique pas

a) à tout casier à homards dont il a été disposé ainsi que le prévoit le paragraphe 58 (10), ou

b) à tout poisson qui a été remis à l'eau en conformité du paragraphe 58 (12). 1960-61, c. 23, art. 10.

Chaque jour que dure la contravention est une infraction distincte

60. Lorsque des rets, seines ou autres engins de pêche sont tendus ou utilisés pour plus d'un jour en contravention à la présente loi, ou aux règlements, chaque jour pendant lequel ces seines, rets ou autres engins de pêche restent ainsi tendus ou en usage constitue une infraction distincte et le contrevenant peut être puni en conséquence; et si quelque autre contravention à la présente loi ou à tout règlement se continue pendant plus d'un jour, chaque jour pendant lequel ladite contravention se continue constitue une infraction distincte et le contrevenant peut être puni en conséquence. S.R., c. 119, art. 65.

Punishment not otherwise provided for

61. (1) Except as otherwise provided in this Act, every person who contravenes any provision of this Act or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both.

Ticket offences

(2) The Governor in Council may by regulation designate any offence under this Act as an offence with respect to which

(a) notwithstanding the provisions of the Criminal Code, any person appointed or designated as a fishery officer or fishery guardian may lay an information and issue and serve a summons by completing a ticket in the form prescribed by the regulations, affixing his signature thereto and delivering the ticket to the person alleged to have committed the offence specified therein at the time the offence is alleged to have been committed, or

(b) the summons may be served on an accused by mailing the summons to him at his latest known address,

and any regulations made under this section shall establish a procedure for voluntarily entering a plea of guilty and paying a fine in respect of each offence to which the regulations relate and shall prescribe the amount of the fine to be paid in respect of each such offence.

Fines

(3) A fine prescribed in respect of an offence by regulations made under subsection (2) may be lower for a first offence than for any subsequent offence but in no case shall it be greater than one hundred dollars.

Regulations

(4) The Governor in Council may make regulations prescribing anything that is to be prescribed under this section.

Who shall be liable

62. When not otherwise specified every proprietor, owner, agent, tenant, occupier, partner or person actually in charge, either as occupant or servant, shall be deemed to be jointly and severally liable for any penalties or moneys recovered under any of the provisions of this Act, or of any regulation. R.S., c. 119, s. 67.

Offences by fishery officers

63. Any fishery officer or fishery guardian, who violates this Act or any regulation, or who aids, abets or connives at any violation of this Act or of any regulation, is liable upon summary conviction before any recorder, commissioner of police, judge of the sessions of the peace, police, stipendiary or district magistrate or any two justices of the peace, to a penalty not exceeding five hundred dollars and costs or six months imprisonment and not less than one hundred dollars and costs or three months imprisonment. R.S., c. 119, s. 68.

Peines dans les cas non spécifiés

61. (1) A moins d'une disposition contraire de la présente loi, quiconque enfreint la présente loi ou les règlements est coupable d'une infraction et passible, sur déclaration sommaire de culpabilité, d'une amende d'au plus cinq mille dollars et d'une peine d'emprisonnement de douze mois au maximum ou de l'une de ces peines.

Contravention

(2) Le gouverneur en conseil peut, par règlement, désigner les infractions à la présente loi pour lesquelles,

a) par dérogation au Code criminel, les fonctionnaires des pêcheries ou garde-pêche peuvent déposer une dénonciation et signifier une sommation en dressant le procès-verbal prévu par les règlements, en le signant et en le remettant sur-le-champ à l'inculpé; ou

b) une sommation peut être signifiée à l'inculpé en l'expédiant par la poste à sa dernière adresse.

Les règlements d'application du présent article doivent accorder aux personnes inculpées des infractions qu'ils désignent la faculté de plaider coupable en payant l'amende qu'ils fixent pour ces infractions.

Amendes

(3) Les amendes prévues par les règlements d'application du présent article peuvent être plus élevées pour les cas de récidive mais elles ne doivent jamais dépasser cent dollars.

Règlement

(4) Le gouverneur en conseil peut, par règlement, prescrire ce qui doit l'être en vertu du présent article.

Qui est responsable

62. En l'absence de dispositions contraires, le propriétaire, possesseur, agent, locataire, occupant, associé ou la personne effectivement en charge, soit à titre d'occupant, soit à titre de serviteur, sont censés conjointement et solidairement responsables des amendes ou deniers recouvrés en vertu des dispositions de la présente loi ou de tout règlement. S.R., c. 119, art. 67.

Contraventions des fonctionnaires des pêcheries

63. Tout fonctionnaire des pêcheries ou garde-pêche qui enfreint la présente loi ou quelque règlement, ou qui aide, favorise ou tolère quelque contravention à la présente loi ou à quelque règlement, est passible, après déclaration sommaire de culpabilité devant un recorder, commissaire de police, juge des sessions de la paix, magistrat de police, magistrat stipendiaire ou magistrat de district ou deux juges de paix, d'une amende ne dépassant pas cinq cents dollars et des frais ou de six mois d'emprisonnement, et d'au moins cent dollars et des frais, ou de trois mois d'emprisonnement. S.R., c. 119, art. 68.

LIMITATION OF SUITS

Time limit

64. Any proceedings by way of summary conviction in respect of an offence under this Act may be instituted at any time within two years after the time when the subject-matter of the proceedings arose.

FORM OF PROCEDURE

Form of procedure

65. Except in so far as in this Act is otherwise specially provided all penalties and forfeitures incurred under this Act or under any regulation are recoverable and enforceable by summary proceedings taken under the provisions of the Criminal Code relating to summary convictions. R.S., c. 119, s. 72.

No quashing for want of form

66. No proceeding or conviction under this Act or under any regulation under it shall be set aside or quashed on certiorari or otherwise for irregularity or defect in form, and no warrant of arrest or commitment shall be held void by reason of any defect therein, if it is therein alleged that the defendant has been convicted, and there is a good and valid conviction to sustain the same. R.S., c. 119, s. 73.

APPLICATIONS OF PENALTIES AND FORFEITURES

Penalties and forfeitures

67. The Governor General in Council may prescribe the manner in which the proceeds of penalties and the proceeds of the sale of confiscated articles shall be distributed. R.S., c. 119, s. 74.

Appeal in case of grievance by conviction

68. Persons aggrieved by any conviction for any offence under this Act may appeal by petition to the Minister, who may remit penalties and restore forfeitures under this Act; but when a conviction takes place or an order is made by a justice of the peace or fishery officer for the payment of money or dismissing an information or complaint under this Act, nothing in this section prevents any person who thinks himself aggrieved by any such conviction or order or dismissal, the prosecutor or complainant, as well as the defendant, from the right of appeal that he has under the provisions of the Criminal Code relating to summary convictions. R.S., c. 119, s. 75.

PRESCRIPTION

Prescription

64. Des procédures par voie de déclaration sommaire de culpabilité relativement à une infraction en vertu de la présente loi peuvent être instituées à tout moment dans les deux ans qui suivent la date à laquelle l'objet des procédures a pris naissance.

FORME DE LA PROCÉDURE

Forme de la procédure

65. Sauf dispositions contraires spécialement prévues dans la présente loi, toutes les peines et confiscations encourues en vertu de la présente loi ou de tout règlement sont recouvrable et exécutoires au moyen de procédures sommaires intentées sous le régime des dispositions du Code criminel concernant les déclarations sommaires du culpabilité. S.R., c. 119, art. 72.

Pas d'annulation pour vice de forme

66. Nulle procédure intentée ou condamnation prononcée sous l'autorité de la présente loi ou de tout règlement établi sous son régime ne doit être écartée ni annulée, par voie de certiorari ou autrement, pour cause d'irrégularité ou de vice de forme; et nul mandat d'arrestation ou d'emprisonnement ne peut être infirmé pour cause de vice de forme, s'il y est allégué que le défendeur a été trouvé coupable et s'il y a une bonne et valable déclaration de culpabilité à l'appui de la condamnation. S.R., c. 119, art. 73.

EMPLOI DES AMENDES ET CONFISCATIONS

Amendes et confiscations

67. Le gouverneur général en conseil peut prescrire la manière dont le produit des amendes et le produit des amendes et le produit de la vente d'articles confisqués doivent être distribués. S.R., c. 119, art. 74.

Appel dans le cas de grief résultant d'une condamnation

68. Les personnes lésées par une déclaration de culpabilité d'une contravention quelconque à la présente loi peuvent, par voie de pétition, en appeler au Ministre, qui peut faire grâce des amendes et rendre les choses confisquées en vertu de la présente loi; mais lorsqu'une déclaration de culpabilité est prononcée ou qu'un ordre est donné par un juge de paix ou un fonctionnaire des pêcheries pour le paiement de deniers ou le rejet d'une dénonciation ou d'une plainte en vertu de la présente loi, rien dans le présent article n'empêche une personne qui se croit lésée par cette déclaration de culpabilité, cet ordre ou ce rejet, le poursuivant ou plaignant aussi bien que le défendeur, d'exercer le droit d'appel qu'elle a en vertu des dispositions du Code criminel concernant les déclarations sommaires de culpabilité. S.R., c. 119, art. 75.

APPLICATION OF ACT TO WATERS OTHER THAN CANADIAN FISHERIES WATERS

Application of Act to High Seas

69. (1) The provisions of this Act and the regulations that apply to any or all of Canadian fisheries waters, without anything in the context of such provisions indicating that they apply to any specified area of Canadian fisheries waters, shall, in relation to any fishing vessel or aircraft on or over the High Seas that is subject to the jurisdiction of Canada, or any act or thing done or omitted to be done on, from or by means of any such fishing vessel or aircraft, be deemed to extend and apply to the High Seas.

Regulations

(2) The Governor in Council may make regulations respecting fisheries located in waters other than Canadian fisheries waters applicable to vessels or aircraft subject to the jurisdiction of Canada.

Inconsistency or conflict

(3) Where there is any inconsistency or conflict between any regulations that apply to the High Seas by virtue of subsection (1) and any regulations made under subsection (2), the latter regulations prevail to the extent of the inconsistency or conflict, unless the context otherwise requires.

Jurisdiction

70. All courts and justices in Canada have the same jurisdiction with respect to offences under this Act as they have under sections BI-11 and BI-12 of the *Maritime Code* and those sections apply to offences under this Act in the same manner and to the same extent as they apply to offences under the *Maritime Code*.

Application of Act to Her Majesty

71. This Act is binding on Her Majesty in right of Canada or a province and any agent thereof.

NOTE:

References

Whenever the expression "eaux poissonneuses" is mentioned or referred to in the French version of the Fisheries Act or in the French version of any order, rule or regulation made under that Act, there shall in every case, unless the context otherwise requires, be substituted the expression "eaux où vivent des poissons".

APPLICATION DE LA LOI AUX EAUX AUTRES QUE LES EAUX DES PÊCHERIES CANADIENNES

Application à la haute mer

69. (1) Les dispositions de la présente loi et des règlements qui s'appliquent à la totalité ou quelque partie des eaux des pêcheries canadiennes, lorsque rien dans leur contexte n'indique qu'elles s'appliquent à une étendue déterminée des eaux des pêcheries canadiennes, sont, relativement à tout vaisseau de pêche ou aéronef se trouvant en haute mer ou la survolant et étant assujetti à la juridiction du Canada, ou relativement à une action ou une chose quelconque accomplie, ou dont l'accomplissement a été omis, à bord, à partir ou au moyen d'un semblable vaisseau, réputées s'étendre et s'appliquer à la haute mer.

Règlements

(2) Le gouverneur en conseil peut établir des règlements, concernant la pêche dans les eaux autres que les eaux des pêcheries canadiennes, applicables aux navires et aéronefs assujettis à la juridiction du Canada.

Incompatibilité ou conflit

(3) Dans les cas d'incompatibilité ou de conflit entre les règlements qui s'appliquent à la haute mer en vertu du paragraphe (1) et les règlements établis en vertu du paragraphe (2), ces derniers prévalent dans la mesure de ce conflit ou de cette incompatibilité, à moins d'exigences contraires du contexte.

Compétence

70. Tous les tribunaux et les juges au Canada possèdent, à l'égard des infractions prévues par la présente loi, la même compétence que celle que leur confèrent les articles BI-11 et BI-12 du *Code maritime* et les dispositions de ces articles s'appliquent aux infractions prévues par la présente loi de la même manière qu'elles s'appliquent aux infractions prévues par le *Code maritime*, et dans la même mesure.

La présente loi lie Sa Majesté

71. La présente loi lie Sa Majesté du chef du Canada ou d'une province et tout mandataire de Sa Majesté.

NOTA:

Référence

L'expression "eaux poissonneuses" est remplacée, avec les accords d'usage requis par le contexte, par "eaux où vivent des poissons" partout où elle apparaît dans la version française de la Loi sur les pêcheries et dans la version française des ordonnances, règles et règlements établis en vertu de cette loi.

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